

# Texas Historical Statutes Project

1939 SUPPLEMENT  
TO  
VERNON'S TEXAS STATUTES 1936



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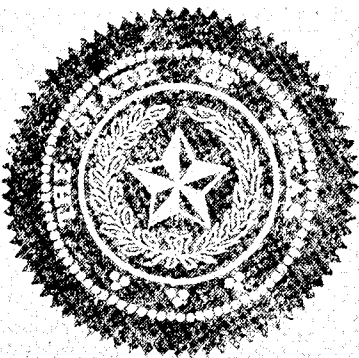


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The State of Texas  
Secretary of State

I, TOM L. BEAUCHAMP, Secretary of State of the State of Texas, DO HEREBY CERTIFY that, according to the records of this Office, the text of the laws appearing in this 1939 Supplement to Vernon's Texas Statutes, Centennial Edition, is a true and correct copy of such laws as published by this Office.



IN TESTIMONY WHEREOF, I have herunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this ...12th... day of ...September... A. D., 19...39.

*Tom L. Beauchamp*  
Secretary of State

# VERNON'S TEXAS STATUTES

CENTENNIAL EDITION

## 1939 SUPPLEMENT

Covering  
Laws of General Nature Enacted by the Legislature  
at the Regular and Called Sessions From  
January 1, 1936 to December 1, 1939

46th Legislature, Regular Session  
45th Legislature, 1st and 2nd Called Sessions  
45th Legislature, Regular Session  
44th Legislature, 3d Called Session

TABLES AND INDEX

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## THIS VOLUME

THIS 1939 cumulative supplement to **Vernon's Texas Statutes 1936 Centennial Edition** contains the laws of a general and permanent nature through the regular session of the 46th Legislature and connects directly with the Centennial volume.

**Text of Laws Certified.** The text of the laws contained in this volume has been certified by the Secretary of State as being in accordance with the copy filed in his office.

**Classification.** The classification of the laws and their arrangement conforms exactly to that of the **Centennial Edition** which in turn is based upon the Official Revised Civil and Criminal Statutes of 1925.

**Annotated Statute Identical in Arrangement.** This cumulative supplement as well as the Centennial Edition are under the same classification and arrangement as **Vernon's Annotated Texas Statutes**. This means that users of this volume and of the Centennial Edition may go from any article herein to the same article in **Vernon's Annotated Texas Statutes** where the complete constructions of the law by state and federal courts, as well as complete historical data relative to the origin and development of the law, is immediately available.

**Special Features.** The same practical features which have served to popularize the Centennial Edition such as complete index, tables, etc., are continued in this supplement.

**Acknowledgment.** The publisher extends appreciative thanks to the office of the Secretary of State in the work of verifying the accuracy of the text.

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# JUDGES AND OFFICERS

---

## Supreme Court

C. M. CURETON, CHIEF JUSTICE  
JOHN H. SHARP, Assoc. JUSTICE      RICHARD CRITZ, Assoc. JUSTICE  
S. A. PHILQUIST, CLERK  
L. K. SMOOT, REPORTER

---

## Commission of Appeals

### *Section A*

J. D. HARVEY, PRESIDING JUDGE  
S. H. GERMAN, JUDGE      J. E. HICKMAN, JUDGE

### *Section B*

G. B. SMEDLEY, PRESIDING JUDGE  
W. M. TAYLOR, JUDGE      A. B. MARTIN, JUDGE

---

## Court of Criminal Appeals

FRANK LEE HAWKINS, PRESIDING JUDGE  
HARRY N. GRAVES, JUDGE      GEORGE E. CHRISTIAN, JUDGE  
CHARLES G. KRUEGER, JUDGE  
OLIN W. FINGER, CLERK

---

## Courts of Civil Appeals

### *First District—Galveston*

WALTER E. MONTEITH, CHIEF JUSTICE  
GEORGE W. GRAVES, Assoc. JUSTICE      T. H. CODY, Assoc. JUSTICE  
H. L. GARRETT, CLERK

### *Second District—Fort Worth*

IRBY DUNKLIN, CHIEF JUSTICE  
MARVIN H. BROWN, Assoc. JUSTICE      JOHN SPEER, Assoc. JUSTICE  
J. A. SCOTT, CLERK

### *Third District—Austin*

JAMES W. McCLENDON, CHIEF JUSTICE  
MALLORY B. BLAIR, Assoc. JUSTICE      J. HARVEY BAUGH, Assoc. JUSTICE  
R. E. MOORE, CLERK

JUDGES AND OFFICERS

x

Courts of Civil Appeals—Cont'd.

*Fourth District—San Antonio*

EDWARD W. SMITH, CHIEF JUSTICE

W. O. MURRAY, Assoc. Justice                      C. S. SLATTON, Assoc. Justice  
ROBERT L. COOK, CLERK

*Fifth District—Dallas*

JOEL R. BOND, CHIEF JUSTICE

B. F. LOONEY, Assoc. Justice                      TOWNE YOUNG, Assoc. Justice  
JUSTIN G. BURT, CLERK

*Sixth District—Texarkana*

GEORGE W. JOHNSON, CHIEF JUSTICE

REUBEN A. HALL, Assoc. Justice                      I. N. WILLIAMS, Assoc. Justice  
R. B. HOLLINGSWORTH, CLERK

*Seventh District—Amarillo*

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W. N. STOKES, Assoc. Justice                      A. J. FOLLEY, Assoc. Justice  
J. M. OAKES, CLERK

*Eighth District—El Paso*

P. R. PRICE, CHIEF JUSTICE

ERASTUS F. HIGGINS, Assoc. Justice                      ANDERSON M. WALTHALL, Assoc. Justice  
J. I. DRISCOLL, CLERK

*Ninth District—Beaumont*

DANIEL WALKER, CHIEF JUSTICE

WILLIAM B. O'QUINN, Assoc. Justice                      J. M. COMBS, Assoc. Justice  
W. G. WOODARD, CLERK

*Tenth District—Waco*

JESSE N. GALLAGHER, CHIEF JUSTICE

JAMES P. ALEXANDER, Assoc. Justice                      BALLARD W. GEORGE, Assoc. Justice  
RUTH SAPP, CLERK

*Eleventh District—Eastland*

WILLIAM PHARMER LESLIE, CHIEF JUSTICE

O. C. FUNDERBURK, Assoc. Justice                      CLYDE GRISSOM, Assoc. Justice  
DAN CHILDRESS, CLERK

# OFFICERS AND MEMBERS

of the

## Forty-Sixth Legislature of the State of Texas

---

### STATE OFFICERS

GOVERNOR .....W. Lee O'Daniel ...Fort Worth  
LIEUTENANT GOVERNOR .....Coke R. Stevenson ...Junction  
SECRETARY OF STATE .....M. O. Flowers .....Lockhart  
ATTORNEY GENERAL .....Gerald C. Mann .....Dallas

### 46TH LEGISLATURE

#### SENATE

Term 4 Years

PRESIDING OFFICER .....Coke R. Stevenson

Amarillo .....	C. C. Small	Lufkin .....	John S. Redditt
Austin .....	Houghton Brownlee	Palestine .....	Clay Cotten
Brenham .....	Albert Stone	Paris .....	A. M. Aikin, Jr.
Chillicothe .....	George C. Moffett	Pettus .....	Morris Roberts
Dallas .....	W. C. Graves	Port Arthur .....	Allan Shivers
Eastland .....	Wilbourne B. Collie	Prairie Hill .....	Doss Hardin
Edinburg .....	Rogers Kelley	Rockwall .....	Claude Isbell
Fort Stockton ...	H. L. Winfield	San Angelo .....	Penrose B. Metcalfe
Fort Worth .....	Jesse E. Martin	San Antonio ....	J. Franklin Spears
Galveston .....	William E. Stone	Seguin .....	R. A. Weinert
Henderson .....	Joe L. Hill	Stephenville .....	J. Manley Head
Houston .....	Weaver Moore	Texarkana .....	E. Harold Beck
Huntsville .....	Gordon M. Burns	Tioga .....	Olan R. Van Zandt
Jackshoro .....	R. C. Lanning	Tyler .....	Will D. Pace
LaGrange .....	L. J. Sulak	Waxahachie .....	Vernon Lemens
Lubbock .....	G. H. Nelson		

### REPRESENTATIVES

Term 2 Years

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Amarillo .....	G. H. Little	Austin .....	Homer Thornberry
Athens .....	James Spencer	Bay City .....	Paris Smith
Atlanta .....	Abe M. Mays	Belton .....	Arthur Holland

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Breckenridge .....	Lester Clark	Gregory .....	J. Harvey Shell
Brenham .....	R. A. Fuchs	Hallettsville .....	Paul C. Boethel
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Cee Vee .....	R. A. Harp	Houston .....	William Calvin
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Cisco .....	Omar Burkett	Houston .....	R. Emmett Morse
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Cooper .....	Troy E. Kern	Jefferson .....	George H. Harper
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Corsicana .....	Doyle Pevehouse	Kenedy .....	Helmuth H.
Crockett .....	Bailey B. Ragsdale		Schuenemann
Cuero .....	John J. Bell	Kerens .....	James E. Taylor
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Dallas .....	L. C. McDaniel	Lampasas .....	Ellis D. Cockrell
Dallas .....	Kal Segrist	Laredo .....	B. J. Leyendecker
Dallas .....	Dallas A. Blankenship	Levelland .....	Alvin R. Allison
Dallas .....	Rawlins M. Colquitt	Liberty .....	Price Daniel
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Denton .....	Joe Skiles	Longview .....	Roy I. Tennant, Jr.
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El Paso .....	W. W. Bridgers	Marlin .....	Albert L. Derden
El Paso .....	Harold M. Hankamer	Marshall .....	Robert H. Wood
Evant .....	Weldon Burney	May .....	W. R. Chambers
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Fairfield .....	Bowlen Bond	Montague .....	Marvin F. London
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Forney .....	John E. Roach	Munday .....	Grady Roberts
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Fort Worth .....	Ed. Bradford	New Braunfels .....	Frank B. Voigt
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Galveston .....	E. H. Thornton, Jr.	Paris .....	T. D. Wells
Garner .....	Delmar L. King	Pearsall .....	Magus F. Smith
Giddings .....	Henry G. Lehman	Perryton .....	Max W. Boyer
Gilmer .....	Mat Davis	Plainview .....	Arthur B. Tarwater
Glen Rose .....	Jack Langdon	Port Arthur .....	DeWitt Kinard
Gonzales .....	John M. Mohrmann	Port Arthur .....	Harvey Riviere

\*Resigned. Vacancy.

## OFFICERS AND MEMBERS

## REPRESENTATIVES—Continued

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Port Neches . . . .	C. E. Nicholson	Sweetwater . . . .	R. Temple Dickson
Prairie Hill . . . .	Ross Hardin	Taylor . . . . .	Robert Stoll
Rio Grande City..	Arnold J. Vale	Tyler . . . . .	Eugene Talbert
Rocksprings . . . .	C. H. Gilmer	Uvalde . . . . .	Joe Monkhouse
Rosenberg . . . . .	H. Cecil Baker	Vernon . . . . .	R. R. Donaghey
San Angelo . . . . .	Dorsey B. Hardeman	Waco . . . . .	Eugene McNamara
San Antonio . . . .	P. L. Anderson	Waco . . . . .	Mrs. Margaret Harris
San Antonio . . . .	Pat Dwyer		Gordon
San Antonio . . . .	R. L. Reader	Waco . . . . .	D. M. Wilson
San Antonio . . . .	P. E. Dickison	Waxahachie . . . .	J. R. Faulkner
San Antonio . . . .	Fred Felty	Waxahachie . . . .	Leland M. Johnson
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Sherman . . . . .	Joe A. Keith	Wichita Falls . . . .	M. A. Bundy
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Spur . . . . .	C. L. Harris	Zavala . . . . .	Ottis E. Lock
Stephenville . . . .	Bose Reader		



# CONSTITUTION OF STATE OF TEXAS

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## AMENDMENTS

### ARTICLE III

#### LEGISLATIVE DEPARTMENT

##### Sec. 26a

Provided however, that no county shall be entitled to or have under any apportionment more than seven (7) Representatives unless the population of such county shall exceed seven hundred thousand (700,000) people as ascertained by the most recent United States Census, in which event such county shall be entitled to one additional Representative for each one hundred thousand (100,000) population in excess of seven hundred thousand (700,000) population as shown by the latest United States Census; nor shall any district be created which would permit any county to have more than seven (7) Representatives except under the conditions set forth above. (Sec. 26a, Art. 3, adopted election Nov. 3, 1936.)

##### Sec. 48a

In addition to the powers given to the Legislature, under Section 48 of Article 3, it shall have the right to levy taxes to provide a Retirement Fund for persons employed in public schools, colleges and universities, supported wholly or partly by the State; provided that the amount contributed by the State to such Retirement Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum of the compensation paid to each such person by the State, and/or school districts, and shall in no one year exceed the sum of One Hundred Eighty (\$180.00) Dollars for any such person; provided no person shall be eligible for a pension under this Amendment who has not taught twenty years in the State of Texas, but shall be entitled to a refund of the moneys paid into the fund.

All funds provided from the compensation of said persons, or by the State of Texas, for such Retirement Fund, as are received by the Treasury of the State of Texas, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States; provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amounts that may become due each year under such retirement plan as may be provided by law; and provided that the recipients of such retirement fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless such

retirement fund, contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid. (Sec. 48a, Art. 3, adopted election Nov. 3, 1936.)

#### Sec. 51c

The Legislature shall have the power by General Laws to provide, under such limitations and regulations and restrictions as may by the Legislature be deemed expedient, for assistance to the needy blind over the age of twenty-one (21) years, and for the payment of same not to exceed Fifteen Dollars (\$15) per month per person; such assistance or aid to be granted only to actual bona fide citizens of Texas; provided that no habitual criminal and no habitual drunkard and no inmate of any State supported institution, while such inmate, shall be eligible for such assistance to the needy blind over the age of twenty-one (21) years; provided, further, that the requirements for the length of time of actual residence in Texas shall never be less than five (5) years during the nine (9) years immediately preceding the application for assistance to the needy blind over the age of twenty-one (21) years; and continuously for one year immediately preceding such application.

The Legislature shall have the authority to accept from the Government of the United States such financial aid for assistance to the needy blind as that Government may offer not inconsistent with the restrictions hereinabove provided. (Sec. 51-c, Art. III, adopted election Aug. 23, 1937.)

#### Sec. 51d

Subject to the limitations and restrictions herein contained, and such other limitations, restrictions, and regulations as may be provided by law, the Legislature shall have the power to provide for assistance to destitute children under the age of fourteen (14) years; such assistance shall not exceed Eight Dollars (\$8) per month for one child nor more than Twelve Dollars (\$12) per month for such children of any one family; provided that the amount to be expended for such assistance out of state funds shall never exceed the sum of One Million, Five Hundred Thousand Dollars (\$1,500,000) per year. The Legislature may impose residential restrictions and such other restrictions, limitations, and regulations as to it may seem expedient.

The Legislature shall have the authority to accept from the Government of the United States such financial assistance to destitute children as that Government may offer not inconsistent with the restrictions herein above provided. (Sec. 51-d, Art. III, adopted election Aug. 23, 1937.)

#### Sec. 52d

Upon the vote of a majority of the resident qualified electors owning rendered taxable property therein so authorizing, a county or road district may collect an annual tax for a period not exceeding five (5) years to create a fund for constructing lasting and permanent roads and bridges or both. No contract involving the expenditure of any of such fund shall be valid unless, when it is made, money shall be on hand in such fund.

At such election, the Commissioners' Court shall submit for adoption a road plan and designate the amount of special tax to be levied; the number of years said tax is to be levied; the location, description, and character of the roads and bridges; and the estimated cost thereof. The funds raised by such taxes shall not be used for purposes other than those specified in the plan submitted to the voters. Elections may be held from time to time to extend or discontinue said plan or to increase



or diminish said tax. The Legislature shall enact laws prescribing the procedure hereunder.

The provisions of this section shall apply only to Harris County and road districts therein. (Sec. 52d, Art. III, adopted election Aug. 23, 1937.)

#### Sec. 59

The Legislature shall have power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for such State employees, as in its judgment is necessary or required; and to provide for the payment of all costs, charges, and premiums on such policies of insurance; providing the State shall never be required to purchase insurance for any employee. (Sec. 59, Art. 3, adopted election Nov. 3, 1936.)

## ARTICLE IV

### EXECUTIVE DEPARTMENT

#### Sec. 5

The Governor shall, at stated times, receive as compensation for his services an annual salary of Twelve Thousand (\$12,000.00) Dollars and no more, and shall have the use and occupation of the Governor's Mansion, fixtures and furniture; provided that the amendment shall not become effective until the third Tuesday in January, 1937. (Sec. 5, Art. 4, adopted election Nov. 3, 1936.)

#### Sec. 11

There is hereby created a Board of Pardons and Paroles, to be composed of three members, who shall have been resident citizens of the State of Texas for a period of not less than two years immediately preceding such appointment, each of whom shall hold office for a term of six years; provided that of the members of the first board appointed, one shall serve for two years, one for four years and one for six years from the first day of February, 1937, and they shall cast lots for their respective terms. One member of said Board shall be appointed by the Governor, one member by the Chief Justice of the Supreme Court of the State of Texas, and one member by the presiding Justice of the Court of Criminal Appeals; the appointments of all members of said Board shall be made with the advice and consent of two-thirds of the Senate present. Each vacancy shall be filled by the respective appointing power that theretofore made the appointment to such position and the appointive powers shall have the authority to make recess appointments until the convening of the Senate.

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; and he shall have the power to revoke paroles and conditional pardons. With the advice and consent of the Legislature, he may grant reprieves, commutations of punishment and pardons in cases of treason.

The Legislature shall have power to regulate procedure before the Board of Pardons and Paroles and shall require it to keep record of its actions and the reasons therefor, and shall have authority to enact parole laws. (Sec. 11, Art. 4, adopted election Nov. 3, 1936.)

#### Sec. 21

There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary of Six Thousand (\$6,000.00) Dollars, and no more. (Sec. 21, Art. 4, adopted election Nov. 3, 1936.)

#### Sec. 22

The Attorney General shall hold office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary of Ten Thousand (\$10,000.00) Dollars, and no more. (Sec. 22, Art. 4, adopted election Nov. 3, 1936.)

#### Sec. 23

The Comptroller of Public Accounts, the Treasurer and the Commissioner of the General Land Office shall each hold office for the term of two years and until his successor is qualified; receive an annual salary of Six Thousand (\$6,000.00) Dollars, and no more; reside at the Capitol of the State during his continuance in office, and perform such duties as are or may be required by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this Section, or in his office, shall be paid, when received, into the State Treasury. (Sec. 23, Art. 4, adopted election Nov. 3, 1936.)

## ARTICLE V

### JUDICIAL DEPARTMENT

#### Sec. 3

"The Supreme Court shall sit for the transaction of business from the first Monday of October in each year until the last Saturday in June of the next year, inclusive at the Capitol of the State."

The above sentence in the second paragraph was repealed by amendment adopted at November election 1930. See section 3a post.

## ARTICLE VIII

## TAXATION AND REVENUE

## Sec. 20

No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value; provided that in order to encourage the prompt payment of taxes, the Legislature shall have the power to provide that the taxpayer shall be allowed by the State and all governmental and political subdivisions and taxing districts of the State a three per cent (3%) discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent; and the taxpayer shall be allowed a two per cent (2%) discount on said taxes if paid sixty (60) days before said taxes would become delinquent; and the taxpayer shall be allowed a one per cent (1%) discount if said taxes are paid thirty (30) days before they would otherwise become delinquent. This amendment shall be effective January 1, 1939. The Legislature shall pass necessary laws for the proper administration of this Section. (Sec. 20, Art. 8, adopted election Aug. 23, 1937.)

## ARTICLE XVI

## GENERAL PROVISIONS

## Section 1. Official Oath

Members of the Legislature, and all officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation: "I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. So help me God." Sec. 1, Art. 16, adopted election Nov. 8, 1938.

## Sec. 16

The Legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized to engage in business at more than one place which shall be designated in its charter.

No foreign corporation, other than the national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State. (Sec. 16, Art. 16, adopted election Aug. 23, 1937.)

**PROPOSED AMENDMENTS**

Enacted by the 46th Legislature at the Regular Session of 1939

For submission to qualified voters at Election November 5, 1940

**ARTICLE IV. EXECUTIVE DEPARTMENT**

**Sec. 26**

(a) The Secretary of State shall appoint a convenient number of Notaries Public for each county who shall perform such duties as now are or may be prescribed by law. The qualifications of Notaries Public shall be prescribed by law.

(b) Nothing herein shall affect the terms of office of Notaries Public who have qualified for the present term prior to the taking effect of this amendment.

(c) Should the Legislature enact an enabling law hereto in anticipation of the adoption of this amendment, such law shall not be invalid by reason of its anticipatory character.

The amendment to this section was proposed by section 1 of Senate Joint Resolution No. 6, 46th Legislature, Regular Session 1939, approved June 7, 1939.

Section 2 of the Joint Resolution provided for its submission to the qualified voters

at a special election on Nov. 5, 1940. Section 3 directed the Governor to issue the necessary proclamation for said election and have the same published. Section 4 made an appropriation to pay the expenses of the publication and election.

**ARTICLE V. JUDICIAL DEPARTMENT**

**Sec. 3-b**

The Legislature shall have the power to provide by law, for an appeal direct to the Supreme Court of this State from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of this State, or on the validity or invalidity of any administrative order issued by any state agency under any statute of this State.

The addition of this section was proposed by section 1 of Senate Joint Resolution No. 4, 46th Legislature, Regular Session 1939, approved May 31, 1939.

Section 2 of the Joint Resolution provided for its submission to the qualified vot-

ers at the general election on Nov. 5, 1940. Section 3 directed the Governor to issue the necessary proclamation for said election and have the same published. Section 4 made an appropriation to pay the expenses of the publication and election.

**ARTICLE VIII. TAXATION AND REVENUE**

**Sec. 9-A.**

Upon the vote of a majority of the resident qualified electors owning rendered taxable property therein so authorizing, the Commissioners Court of Red River County, Texas, may levy an annual tax not to exceed Twenty-five (25) Cents on the one hundred dollars valuation for a period not to exceed fifteen (15) years for the purpose of refunding all the outstanding warrant indebtedness of the General Fund of such County and issue bonds under the provisions of the General Law regulating the issuance of bonds to refund said indebtedness.

At such election, the Commissioners Court shall submit for adoption the proposition of whether such outstanding warrant indebtedness of the

General Fund of such County shall be refunded into bonds, the amount of special tax to be levied, and the number of years said tax is to be levied. The funds raised by such taxes shall not be used for purposes other than those specified in the plan submitted to the voters.

The provisions of this Section 9-A shall apply only to Red River County; and the provisions hereof shall be self-enacting without the necessity of an enabling act of the Legislature of the State of Texas, but shall become effective immediately after the official canvass of the result has been made and it is determined that this Amendment has been adopted by a majority of the voters of the State.

The addition of this section was proposed by section 1 of House Joint Resolution No. 45, 46th Legislature, Regular Session 1939, approved June 30, 1939.

Section 2 of the Joint Resolution provided for its submission to the qualified voters on the first Tuesday following the first Monday in November, 1940. Section 3 directed the Governor to issue the neces-

sary proclamation for said election and have the same published. Section 4 made an appropriation to pay the expenses of the publication and election, and contained a proviso "that no election shall be held until Red River County shall first deposit with the State Treasurer the sum of Five Thousand Dollars (\$5,000) with which to pay such expense of said election."

## ARTICLE XVI. GENERAL PROVISIONS

### Sec. 30b

Wherever by virtue of Statute or charter provisions appointive offices of any municipality are placed under the terms and provisions of Civil Service and rules are set up governing appointment to and removal from such offices, the provisions of Article 16, Section 30, of the Texas Constitution limiting the duration of all offices not fixed by the Constitution to two (2) years shall not apply, but the duration of such offices shall be governed by the provisions of the Civil Service law or charter provisions applicable thereto.

The addition of this section was proposed by section 1 of House Joint Resolution No. 8, 46th Legislature, Regular Session 1939, approved May 31, 1939.

Section 2 of the Joint Resolution provided for its submission to the qualified voters at the general election on Nov. 5,

1940. Section 3 directed the Governor to issue the necessary proclamation for said election and have the same published. Section 4 made an appropriation to pay the expenses of the publication and election.

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VERNON'S  
REVISED CIVIL STATUTES  
OF THE  
STATE OF TEXAS

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**TITLE 3—ADOPTION**

**Art. 46a. Petition for adoption, hearing and rights of adopted child**

**Consent of parents, exceptions**

Sec. 6. Except as otherwise amended in this Section, no adoption shall be permitted except with the written consent of the living parents of a child; provided, however, that if a living parent or parents shall voluntarily abandon and desert a child sought to be adopted, for a period of two (2) years, and shall have left such child to the care, custody, control and management of other persons, and such parent or parents so abandoning and deserting such child shall not have contributed to the support of such child during such period of two (2) years, then in such event it shall not be necessary to obtain the written consent of the living parent or parents in such default, and in such cases adoption shall be permitted on the written consent of the Judge of the Juvenile Court of the county of such child's residence, or if there be no Juvenile Court, then on the written consent of the Judge of the County Court of the county of such child's residence.

In the case of a child fourteen (14) years of age or over, the consent of such child also shall be required and must be given in writing in the presence of the Court. Consent shall not be required of parents whose parental rights have been terminated by order of the Juvenile Court or other Court of competent jurisdiction; provided, however, that in such cases adoption shall be permitted only on consent of the superintendent of the home or school, or of the individual to whom the care, custody, or guardianship of such child has been transferred by a Juvenile Court or other Court of competent jurisdiction. In case of a child not born in lawful wedlock the consent of the father shall not be necessary. As amended, Acts 1937, 45th Leg., p. 1324, ch. 490, § 1.

Effective 90 days after May 22, 1937, date declared an emergency and provided that the act should take effect from and after the act should take effect from and after

Section 3 of the amendatory act of 1937 its passage.

**Art. 46b. Validation of adoption**

That all adoption papers which were signed by an adopting parent or parents, or natural parent or parents of a child, prior to January 1, A. D.

1919, and under the terms of which any child was attempted to be adopted, and all attempts made in good faith to effect an adoption of any child subsequent to January 1, A. D. 1919, and which failed of valid consummation through irregularities in the compliance with the then existing laws of this State, be and the same are hereby validated and made of binding force and effect, although said adoption papers were not properly signed and executed or authenticated or acknowledged as required for deeds, and were not, prior to the death of the adopting parent or parents, or prior to the death or disappearance of the natural parent or parents, filed for record with the County Clerk of the adopting parent's or parents' residence. As amended, Acts 1937, 45th Leg., p. 1324, ch. 490, § 2.

Effective 90 days after May 22, 1937, date of adjournment.

## TITLE 4—AGRICULTURE AND HORTICULTURE

Chap.

11. Cotton [New].

### CHAPTER ONE—COMMISSIONER OF AGRICULTURE

Art.

51—1. Jacks and stallions, leasing of state-owned; appointment of caretaker; rules and regulations;

title to remain in state; allocation to Texas Prison System [New].

#### Art. 51. 4443-4448-4449 Duties

Research for new uses for cotton, see art. 165—4.

**Art. 51—1. Jacks and stallions, leasing of state-owned; appointment of caretaker; rules and regulations; title to remain in state; allocation to Texas Prison System**

Section 1. From and after the date of September 1, 1937, the Commissioner of Agriculture of the State of Texas is hereby directed and authorized to distribute throughout the State of Texas, on a lease basis as hereinafter provided, the jacks and stallions purchased by the State of Texas under the terms and provisions of Acts of the Regular Session, Forty-third Legislature, Chapter 163, Page 433,<sup>1</sup> as amended by Acts of the Forty-third Legislature, First Called Session, Chapter 10, Page 32.<sup>2</sup> And said Commissioner of Agriculture is further directed and authorized to name some suitable person, experienced in the handling of jacks and stallions, as caretaker of such jack or stallion. The Commissioner of Agriculture shall adopt and carry out reasonable rules and regulations with respect to the leasing and distribution, care, use and maintenance of such animals. Provided further that the title of all such jacks and stallions hereinbefore mentioned shall be and remain in the State of Texas. Provided further that in the event the Commissioner of Agriculture is unable to place any of such animals as herein provided due in any manner to defects or unfitness for breeding purposes, then the Commissioner of Agriculture is hereby authorized and directed to turn such animals over to the State Board of Control, who shall dispose of same to the best interest of the State.

Before any of the jacks or stallions are leased and distributed as herein provided, the Commissioner of Agriculture shall allocate and tender to the Texas Prison System two jacks and one stallion and after said jacks and stallion have been accepted by the Texas Prison Board, the Commissioner of Agriculture shall thereafter exercise no control or management over such animals. Such animals shall thereafter remain and be the property of the Texas Prison System for its uses and purposes, and said jacks and stallion are to be selected by the Commissioner of Agriculture and General Manager of the Texas Prison System from those jacks and stallions now owned by the State of Texas under the provisions of Chapter 10, Acts of the First Called Session, Forty-third Legislature. And all expenses incurred by the Commissioner of Agriculture in delivering said jacks and stallion to the Texas Prison System shall be borne by said system.

#### Annual rental charge; bond; contracts

Sec. 2. From and after the effective date of this Act the Commissioner of Agriculture shall distribute the jacks and stallions aforesaid through-

out the State of Texas where there is most need shown to competent and capable caretakers who shall agree and pay to the State of Texas the sum of Thirty Dollars (\$30) in advance as an annual rental for the use of such jack or stallion, as the case may be, and who shall first enter into a written contract with the Commissioner of Agriculture all such conditions and terms as may be determined by the Commissioner. In addition thereto each keeper shall be required to enter into a bond with two or more good and sufficient sureties, payable to the State of Texas, upon the approval of the Commissioner of Agriculture, conditioned that such caretaker shall in good faith, feed, water, care for and properly handle such animals. Such bond to be in the sum of not less than the market value of said animal or animals as determined by the Commissioner of Agriculture.

The Commissioner of Agriculture is hereby directed to contract with such keepers or caretakers to terminate on July 1 of each year such contracts to be terminable before that time when in the opinion of the Commissioner of Agriculture, or his agents, such animals are not being properly cared for as provided in the terms of such contracts and no lease shall extend for a period to exceed one year.

The contract hereinabove provided for shall in addition to the provisions herein set forth include one which will permit the use of such jack or stallion by said caretaker for the purposes to which he may be assigned in said contract and in no event shall the keeper or caretaker make a service charge of more than Ten Dollars (\$10) for each foal and such caretaker or keeper shall personally be liable for all refunds in guaranteeing a foal and in no event shall the State of Texas be liable directly or indirectly therefor. And it is expressly provided that the Thirty Dollars (\$30) paid as herein provided shall be all the demand or claim that the State of Texas shall have against such keeper or caretaker for rendering the services herein provided and the sum or sums herein provided as a charge for breeding fees shall be the only compensation said keeper or caretaker may claim of or from the State of Texas therefor.

#### **Special Jack and Stallion Fund; disposition of**

Sec. 3. The money derived from the leasing of the animals hereinabove mentioned shall be deposited by the Commissioner of Agriculture in the State Treasury where it shall be set up as a "Special Jack and Stallion Fund" to be used by the Commissioner to pay the salaries of two (2) competent supervisors at not to exceed Eighteen Hundred Dollars (\$1800) per year each for salaries and who shall receive the actual and necessary traveling expenses while away from Austin in the performance of their duties, which expenses shall not exceed amounts allowed other state employees under the terms and provisions of Senate Bill 138, Acts of the Forty-fifth Legislature, Regular Session, 1937, and in no event shall the salaries and expenses herein authorized exceed the amount collected annually from the lease or hire of animals as herein provided.

#### **Funds transferred; use of funds**

Sec. 4. All moneys now on hand and accruing to the Jack and Stallion Account under H. B. 779,<sup>3</sup> Acts of the Forty-fourth Legislature, Regular Session, and amended by H. B. 8, Chapter 495,<sup>2</sup> Forty-fourth Legislature, Third Called Session, are hereby transferred to the Special Jack and Stallion Fund to be used by the Commissioner of Agriculture for making refunds on breedings heretofore reported in conformity with refunding provisions of H. B. 779, Acts of the Regular Session of the Forty-fourth Legislature, and for the payment of all other expenses incurred in

the administration of this Act, subject to the biennial appropriation for the year ending August 31, 1939. The State Comptroller and the State Treasurer are hereby authorized and directed to make such transfers.

After transferring from said Special Racing Fund the said twenty-five per cent (25%) going to the State Available School Fund and after transferring from said Special Racing Fund all moneys on hand and accruing to the Special Jack and Stallion Fund, the balance then remaining in said Special Racing Fund until it becomes exhausted, shall be used for the payment of the appropriations by the Legislature for the support and maintenance of the State Department of Agriculture as said appropriations for the Department shall be fixed and allowed by the Legislature of the State of Texas from time to time. It is the intent of the Legislature hereby that the above distribution shall immediately be made and the money so transferred shall become available now and for any and all appropriations made by the Regular Session of the Forty-fifth Legislature for the support and maintenance of the State Department of Agriculture and that the General Revenue Fund shall not be drawn on until all moneys in the Special Racing Fund shall become exhausted, and all unexpended balances remaining on hand, at the end of the current biennium ending August 31, 1937, shall be carried over in the succeeding biennium to the use and benefit of the said State Department of Agriculture, as provided by law; providing however, that no refunds of breeding fees shall extend beyond January 1, 1938. [Acts 1937, 45th Leg., 1st C.S., p. 1794, ch. 23.]

<sup>1</sup> Probably should read "Chapter 166, page 433."

<sup>2</sup> Penal Code, art. 655a.

<sup>3</sup> Penal Code, arts. 655a, subsec. 7, 655b. Effective 90 days after June 25, 1937, date of adjournment.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing and giving to the Commissioner of Agriculture certain authority relating to State-owned jacks and stallions and the lease thereof; providing for a maximum breeding fee; providing a lease fee of Thirty Dollars (\$30) and the disposition thereof; providing for the care and maintenance of such jacks and stallions; providing for title to such jacks and stallions to be in the State of Texas; providing for a contract between the Commissioner of Agriculture and the care-

takers and keepers; providing a bond for the protection of such animals; providing for the appointment of supervisors of jacks and stallions by the Commissioner of Agriculture and the payment of said supervisors' salaries and all expenses incident to the supervision of jacks and stallions with certain limitations; providing for the refunding of certain breeding fees incident to the breeding fees of 1936-1937 with limitations; providing for disposal of unfit animals by the Board of Control and for the transfer of present funds by the Comptroller and Treasurer; providing the carrying over of unexpended balances to the next biennium and the expenditures thereof, subject to the biennial appropriations therefor; providing for the support and maintenance of the Department of Agriculture out of certain funds; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1794, ch. 23.]

## CHAPTER TWO.—PLANT BREEDER EXAMINERS

### Art. 67a. Registration of agricultural seed growers

**Inspectors; appointment; duties; rules and regulations; shipments into state; use of certain tags and terms in connection with seed**

Section 4. (a) The Commissioner of Agriculture shall appoint a sufficient number of inspectors nominated by the State Seed and Plant Board to carry into effect the provisions of this Act. He shall cause inspections to be made of the fields and facilities of persons, firms, associations, or corporations certified to him by the State Seed and Plant Board as eligible to qualify as Registered Plant Breeders and Certified Seed Growers. When such inspection reveals the fact that the growing

crops of a Registered Plant Breeder from which it is proposed to produce Registered Seed show a high degree of purity, excellence, and freedom from plant diseases, transmissible through the agency of planting seed, that are required for Registered Seed, and that such field or fields are reasonably free from noxious weed seeds and noxious grasses, and if such seed when produced show the high germination per cent determined to be necessary by the said State Seed and Plant Board for such seed, and are rendered reasonably free of foreign substances, he shall cause to be issued to such person, firm, association or corporation a certificate evidencing the fact that such person, firm, association, or corporation is recognized by the State as a Registered Plant Breeder, and shall cause to be printed tags for each sack or container of seed so produced and so registered, and shall furnish such tags to the applicant at cost, which tags shall bear the words "State Registered Planting Seed", and which shall give in addition thereto the true and correct varietal name of such seed and such other information as he may deem necessary for the protection of the purchaser. If an inspection of the fields and premises of persons, firms, associations, or corporations certified to him as Certified Seed Growers reveals the fact that such fields are of the degree of purity and excellence required for Certified Seed by the State Seed and Plant Board, and if such fields are reasonably free from noxious weed seeds and noxious grass seeds, and free from plant diseases transmissible through the agency of planting seed, and that such seed when produced show the high germination per cent required by the State Seed and Plant Board, and are reasonably free of foreign substances, he shall issue to each applicant his Certificate evidencing the fact that he or it is recognized as a Certified Seed Grower, and shall cause to be issued tags at cost of printing to the Certified Seed Grower, which tags shall bear the words "State Certified Planting Seed" and shall give the true and correct variety and such other information as he may deem necessary for the protection of the public. He shall collect, prior to the making of the inspection, such fees as may be determined by the said State Seed and Plant Board, which shall be deposited in the State Treasury and be credited to a fund to be known as the "Pure Seed Fund", and it shall be paid out by the Treasurer upon warrants issued by the Comptroller upon accounts approved by the Commissioner of Agriculture, for the payment of expenses incurred in the enforcement of this Act.

(b) The Commissioner of Agriculture shall promulgate rules and regulations, tests and standards necessary to carry out the provisions of this Act under which cotton, alfalfa, corn and sorghum seed for planting purposes may be shipped into Texas, and providing that no cotton, alfalfa, corn or sorghum seed for planting purposes may be shipped into Texas for planting purposes unless said seed meet the requirements as set forth by the Commissioner of Agriculture; and each lot of seed of one hundred (100) pounds or less, whether sacked or in bulk, approved for shipment into Texas, shall bear a special tag issued by the Commissioner of Agriculture. Said Commissioner, through his agents, or specially appointed agents, may investigate the quality of the seed to be shipped into the State of Texas and provide such reasonable requirements as may be necessary to insure to the farmers and seed purchasers of this State seed of known origin, value, and merit; and further providing that the Commissioner of Agriculture shall have full authority to refuse permission to any applicant to ship cotton, alfalfa, corn or sorghum planting seed into Texas when the records and information of the agents of said Commissioner of Agriculture show the seed to be of in-



ferior quality, lacking prescribed varietal purity, from diseased fields, or other reasons prescribed in the rules and regulations under the provisions of this Section.

(c) The term "sorghum seed" shall mean seed of grain, sweet and grass sorghum.

(d) Providing that all persons, firms, or corporations seeking to ship cotton, alfalfa, corn or sorghum planting seed into Texas shall secure a permit from the Commissioner of Agriculture prior to shipping any cotton, alfalfa, corn or sorghum planting seed into Texas. Said permit shall be valid for one year but may be cancelled prior to date of expiration for violation of any of the provisions of this Act or the rules and regulations promulgated thereunder.

(e) Providing that any seed for planting purposes shipped into Texas without first complying with the provisions of the law and regulations promulgated hereunder, be considered restricted material, and may be returned to the shipper at his expense. Said shipper shall be granted ten (10) days from date of notice to remove such seed from the State of Texas. Upon his refusal or failure to do so, the confiscation of such seed by the Commissioner of Agriculture or his agents is hereby authorized and without recourse on the State of Texas.

(f) Providing that all planting seed shipped into Texas and bearing the label denoting Registered or Certified Seed shall have been produced under standards equal to the existing standards in Texas for such Class of seed. Such seed coming into the State of Texas and being declared by the Commissioner of Agriculture not to have been produced under Registration and Certification standards equal to the Texas standards, shall not bear the labels or be represented as Registered or Certified Seed, except as hereinafter provided for. Such seed may bear the Registration or Certification tag issued in the State of origin provided such tags are plainly marked "These seed do not meet the requirements of Registration or Certification in Texas."

(g) Providing that the use of the Red or Blue tag on planting seed in Texas is prohibited except when used by duly qualified Registered Plant Breeders or Certified Seed Growers, or when such tags are plainly marked in bold type "Non-Registered" or "Non-Certified" seed.

(h) Providing that the terms "from officially inspected fields," "State Inspected", "approved Seed", "Inspected fields", "first year from Certified Seed," "as good as Certified", and other similar terms be confined to a description of Registered and Certified Seed. Providing, however, that where such terms are used by firms, individuals, or corporations, such written material shall plainly show the words "Non-Registered" or "Non-Certified."

Any person, firm, or corporation violating any of the provision of this Section, or the rules and regulations adopted in accordance with this Act, or who shall sell or offer for sale in Texas cotton, alfalfa, corn or sorghum seed produced outside the confines of the State of Texas without a permit issued in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars, or by imprisonment of not less than ten (10) days nor more than thirty (30) days in the county jail, or both, in the discretion of the Court. Each violation shall constitute a separate offense. As amended Acts 1939, 46th Leg., p. 3.

Effective 90 days after June 21, 1939 date of adjournment.

Section 2 of the amendatory Act of 1939 reads as follows: "If any clause, sentence, paragraph, or part of this Act shall be

adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sen-

tence, paragraph, or any part thereof, directly involved in the controversy in which such judgment has been rendered."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## CHAPTER SIX.—FRUITS AND VEGETABLES

Art.

118b. Citrus fruit growers act; definitions [New].

Art.

118c-1. Tomato Standardization and Inspection Act [New].

### Art. 118b. Citrus fruit growers act; definitions

Section 1. As used in this Act:

(a) "Commissioner" means the Commissioner of Agriculture of the State of Texas. Commissioner is authorized to utilize all employees of the Department of Agriculture in the enforcement of this Act.

(b) "Citrus fruit," as the term is used in this Act, shall be construed to mean all citrus fruits grown in the State of Texas and bought and/or sold and/or handled in any way either as fresh or natural fruit or in canned and/or processed form.

(c) "Persons" shall mean and include any individual, partnership, group of persons or corporation or business unit handling citrus fruit in the State of Texas.

(d) "Handle" means buying or offering to buy, selling or offering to sell, or shipping for the purpose of selling, whether as owner, agent or otherwise, any citrus fruit within the State of Texas, and persons buying and/or shipping citrus fruit for canning and/or processing or handlers, as the term is defined.

(e) "Dealer" means any person who handles fruit, as the word "handle" is defined in (d) of this Section; a "maximum dealer" is a person who handles in excess of one thousand (1,000) standard boxes or the equivalent thereof of citrus fruit within any twelve-month period comprehended by a license issued under this Act; a "minimum cash dealer" is any person who handles one thousand (1,000) or less standard boxes or the equivalent thereof of citrus fruit within any twelve-month period comprehended by a license issued under this Act.

(f) "Buying agent" shall mean any person authorized by any licensed dealer to act for him in the handling of citrus fruit as defined in (d) of this Section.

(g) "Transporting agent" shall mean any person authorized by any dealer to act for said dealer in the transporting of citrus fruit.

(h) "Warehouseman" means and includes any person who receives and stores citrus fruit for compensation.

(i) "Packer" means and includes any person who prepares and/or packs citrus fruit or its products for barter, sale, exchange, or shipment.

(j) A "commission merchant" and/or "dealer" or a "contract dealer," as these terms are used in this Act, shall be construed to mean any "persons," as the word is herein defined, who purchase any citrus fruit on credit, or who take into their possession for consignment or handling, in behalf of the producer or owner thereof, or in any manner whatsoever, or by virtue of any contract whatsoever, which does not require and result in the payment to the producer, seller or consignor thereof the full amount of the purchase price thereof in current money of the United States, at the time of delivery of said citrus fruit to such persons or at the time when the title to such citrus fruit passes from the producer or seller thereof to such "commission merchant" and/or "dealer" or "contract dealer." As amended Acts 1939, 46th Leg., p. 41, § 1.

**License and bond of dealer**

Section 2. No person shall engage in the business of a dealer in citrus fruits as that term is herein defined unless such person shall first have procured a license in accordance with the provisions of this Act.<sup>1</sup> As amended Acts 1939, 46th Leg., p. 41, § 2.

<sup>1</sup> This article and Pen.Code, art. 1700a—3.

**Application for license**

Section 3. Any person desiring to engage in business as a dealer in citrus fruits within this State shall, prior to engaging in such business, file with the Commissioner an application for license, and receive a license, and said application shall be made under oath and the Commissioner shall provide forms for such applications, and said applications shall set forth the following specific information:

(a) The full name of the applicant and whether the applicant is an individual, partnership, corporation, exchange or association of persons; the full name and the address of the principal business office of the applicant and the address of the principal business office of applicant within the State of Texas; in the event that the applicant be a foreign corporation, the application shall name the State in which such corporation was chartered.

(b) The type of license applied for, whether "dealer," "minimum cash dealer," "canner" or "processor."

(c) Foreign corporations filing applications for license under this Act shall indicate clearly in such application the name and the address of an agent for service within this State upon whom service of legal process may be had in any suit brought against said corporate applicant within the State of Texas.

(d) How long the applicant has been engaged in business in the State of Texas.

(e) The applicant shall answer the following questions which shall be included in and made a part of any application for license under the terms and provisions of this Act:

(1) "Have you heretofore been licensed in the State of Texas as a dealer in citrus fruits and/or perishable agricultural commodities?"

(2) "If you have answered that you have been so licensed, has any license so granted you within the State of Texas ever been suspended and/or revoked?"

(3) "If you have answered that a license so issued you within the State of Texas has been suspended and/or revoked, you will state when, where and give a short statement of the reason for such suspension and/or revocation." As amended Acts 1939, 46th Leg., p. 41, § 3.

**License fee accompanying application**

Section 4. All applications for license under this Act shall be accompanied by a tender of payment in full of the fee for such license required; on receipt of said application duly executed, together with required fee, it shall be the duty of the Commissioner or his agents and/or employees thereunto duly authorized to immediately issue such license, provided that no license shall issue to any person when the application for license filed by such person shall indicate that such person is a suspended licensee within the State of Texas, or that such person's license to do business in Texas has been revoked until the Commissioner is furnished with satisfactory proof that the applicant is, on the date of the filing of such application, qualified to receive the license applied for; the issuance of license to persons who have suffered prior suspension or revoca-

tion of license in this State shall be discretionary with the Commissioner; in the exercise of such discretion, the Commissioner is authorized to take into consideration the facts and circumstances pertaining to the prior suspension and/or revocation; the financial condition of the applicant, as of the date of this application, and the obligations due and owing by the applicant to growers and producers of citrus fruits and/or perishable agricultural commodities; "obligation," as the term is used in this Section, shall be construed to mean any judgment of any Court within this State outstanding against the applicant or certified claims as of the date of the application under consideration by the Commissioner; prior to refusal of license by the Commissioner, any applicant for license shall be entitled to an open hearing on the facts pertaining to such application, said hearing to be conducted by the Commissioner, or his agent thereunto duly authorized; if, after such hearing, the Commissioner, in the exercise of his discretion, refuses the license applied for, the applicant shall, within ten (10) days from and after the denial of such license by the Commissioner and not thereafter, file his appeal from the order of the Commissioner denying such license, in any Court of competent jurisdiction within this State; if the Commissioner shall determine that the license applied for shall not be granted, the Commissioner shall deduct from the license fee tendered with such application, the sum of Five Dollars (\$5), said Five Dollars (\$5) to be retained by the Commissioner to defray costs and expenses incident to the filing and examination of said application and shall return the balance of the license fee so tendered with such application to the applicant.

(a) The following fees are hereby prescribed and shall be paid by applicants for license under this Act, and the Commissioner, his agents and employees are hereby authorized to collect the same.

(1) For license as a "dealer" or "handler" of citrus fruit, the sum of Twenty-five Dollars (\$25).

(2) For license as a "commission merchant" and/or "contract dealer," as the term is in this Act defined, Twenty-five Dollars (\$25).

(3) For license as a "minimum cash dealer" the sum of Five Dollars (\$5).

(4) For a license as a "buying agent," the sum of One Dollar (\$1).

(5) For a license as a "transporting agent," the sum of One Dollar (\$1).

(b) All "commission merchants" and/or "dealers" and "contract dealers," as the terms are in this Act defined, shall, in addition to the license fee herein prescribed, deliver to the Commissioner, together with their application for license, a good and sufficient surety bond, payable to the Governor of the State of Texas and his successors in office, in the principal sum of Five Thousand Dollars (\$5,000), said bond to be in such form as the Commissioner may prescribe and shall be conditioned upon faithful compliance with the terms and provisions of this Act and upon the faithful performance of the conditions and terms of all contracts made by said "commission merchants" and/or "dealers" and "contract dealers," pertaining to the handling of citrus fruit under this Act; cause of action may be maintained upon said bond by any person with whom said applicant deals in purchasing, handling, selling and accounting for sales of citrus fruit, as provided in this Act; the aggregate accumulated liability under any such bond shall not exceed the sum of Five Thousand Dollars (\$5,000), and each such bond shall continue in full force and effect until notice of the termination thereof is given by registered mail to the Commissioner, which fact shall be set forth in the face of said bond, but such notice shall not affect the liability which may

have accrued thereon prior to termination. No license shall be issued to any "commission merchant" or "dealer," or "contract dealer" prior to the delivery to the Commissioner and the approval by him of the bond required under the provisions of this Section. No cooperative association organized pursuant to Chapter 8, Title 93 of the Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> that handles fruit only for its members shall be required to furnish bond as required in this Section. Any such cooperative association dealing in citrus fruit other than for its producer members shall be required to furnish bond as any other dealer. It is hereby declared to be the policy of the Legislature to make these exemptions with reference to cooperative associations because of the fact that the producer-members pool their fruit for sale rather than immediately selling it. As amended Acts 1939, 46th Leg., p. 41, § 4.

<sup>1</sup> Articles 5737-5764.

Single bond of persons handling both fruits and vegetables, see article 1287-2.

#### **Hearing on objection to application**

Sec. 5. Repealed. Acts 1939, 46th Leg., p. 41, § 5.

#### **Hearing on charge of violation of act**

Section 6. Any license issued under the provisions of this Act shall remain in full force and effect for a period of twelve (12) months from and after the date of issuance thereof unless said permit shall be cancelled in the manner hereinafter provided and pursuant to the proceedings hereinafter required, to wit: any person aggrieved, injured or damaged by virtue of any violation of the terms and provisions of this Act by any licensee or by the transporting or buying agent of any licensee hereunder, may file with the Commissioner or his duly authorized agent or employer a verified complaint, setting out the specific violation complained of; the Commissioner, on receipt of said verified complaint, shall set a date not more than ten (10) days from the receipt of such complaint for the hearing thereof; Commissioner shall, by registered mail to the last known address, notify the person complained of and shall furnish such person with a copy of such complaint; the Commissioner may, at his discretion, recess the hearing provided for in this Section from day to day if in his discretion the ends of justice demand such continuance; for the purpose of said hearings the Commissioner shall have the authority to summon witnesses; to inquire into matters of fact; to administer oaths, and to issue the subpoena duces tecum, for the purpose of obtaining any books, records, instruments of writing, and other papers pertinent to the investigation at hand; upon the conclusion of said hearing and the introduction of all evidence by the respective parties thereto, the Commissioner shall make his decision on the basis of the evidence introduced therein, and shall, if the evidence warrants, issue his order canceling the license of the person complained of; any licensee, whose license is so cancelled by an order of the Commissioner, shall be notified in writing by registered mail of the cancellation of said license and it shall be unlawful and a violation of this Act for any licensee or buying or transporting agent to operate from and after said notification of cancellation, provided that said licensee or buying or transporting agent whose license has been so cancelled, shall have the right of appeal from the order of the Commissioner, canceling said license to any Court of competent jurisdiction within this State, provided that such appeal shall be filed in said Court, within ten (10) days from and after receipt by licensee of notice of said cancellation,

and provided further that the effect of said appeal by said licensee or licensee's agent shall not act to supersede the order of cancellation issued by the Commissioner, pursuant to final determination of the question of cancellation by said Court. As amended Acts 1939, 46th Leg., p. 41, § 6.

**Cancellation of license; notice**

Sec. 7. Repealed. Acts 1939, 46th Leg., p. 41, § 7.

**Appeal from cancellation**

Sec. 8. Any applicant for license whose application is rejected or any dealer who has been licensed hereunder and whose license is subsequently cancelled, may have an appeal from the Commissioner's ruling to any Court of competent jurisdiction.

**Payment of purchase price on demand**

Sec. 9. Any dealer who shall cause a producer or seller or owner, or agent of producer, seller or owner to part with the control or possession of all or any part of his citrus fruit, and who agrees by his contract of purchase to pay the purchase price upon demand following delivery, shall immediately make payment therefor to such owner or seller. Demand for the purchase price may be made upon dealer in writing, and the mailing of a registered letter making such demand, addressed to said dealer at his business address, shall be prima facie evidence that demand was made upon the mailing of said letter.

**Written contract for handling**

Sec. 10. When a dealer causes a producer, seller or owner, or agent of producer, seller or owner, to part with the control or possession of all or any portion of his citrus fruit by means of any agreement under which the producer, seller or owner or agent of producer, seller or owner, has waived the right to demand the purchase price, as and when he parts with said control or possession of citrus fruit, such contract for the handling, purchase or sale of citrus fruit by the dealer and the producer, seller or owner, or agent of producer, seller or owner, shall be evidenced in writing in duplicate and shall set out in full the details of such transactions. In the event the contract does not specify the time and manner of settlement, then the dealer shall settle therefor within thirty (30) days from the delivery of the citrus fruit into the dealer's control, and the dealer shall then directly account to and pay over to the said producer the full amount called for by the contract.

**Buying by weight**

Sec. 11. Any dealer who buys citrus fruit by weight and who does not have such fruit weighed over public scales by public weigher as provided in Title 4, Chapter 180<sup>1</sup> of the Acts of the Forty-third Regular Session of the Legislature of the State of Texas, as now written or as the same may be amended, shall be deemed guilty of a violation of this Act.<sup>2</sup>

<sup>1</sup> Article 118a and Pen.Code, art. 719B.

<sup>2</sup> This article and Pen.Code, art. 1700a-3.

**Duration of license; license unassignable; identification cards**

Sec. 12. Any license issued hereunder will authorize the licensee, and none other, to engage in the business as a dealer for one year from date of issuance, at which time said license shall expire and become null and void. Any license issued to applicant under the provisions of

this Act, which expires by its own terms, may be renewed upon payment to the Commissioner of Agriculture of the proper license fee as provided for the original issuance thereof. Said license and the identification cards hereinafter provided shall not be assignable and any attempt to assign same shall void such license or identification card. Upon application to the Commissioner by any licensed dealer, a reasonable number of "buying agent" and "transporting agent" identification cards may be issued and accredited to such dealer, under such rules and regulations as said Commissioner may prescribe, and said Commissioner is hereby empowered to charge a fee not to exceed One Dollar (\$1) for each card so issued:

(a) Such cards shall bear the name of the licensee, dealer, and the number of his license, also the name of the dealer's agent, and shall state thereon that said licensed dealer, as the principal, has authorized the agent named on the card, the holder thereof, to act for and on behalf of said principal, either as "buying agent" or as "transporting agent" as above defined. "Buying agent" identification cards shall be of a different color from "transporting agent" cards. Such identification cards shall be at all times carried upon the persons of such agents who shall, upon demand, display such cards to the Commissioner or his agents or representatives, or to any person with whom said agent may be transacting business under this Act.

(b) If and when the holder of any identification card ceases to be the agent of the dealer by whom he was employed, it shall be the duty of said agent to return immediately such agent's card to the Commissioner for cancellation and failure to do so shall constitute a violation of this Act. As amended Acts 1939, 46th Leg., p. 41, § 8.

**Regulations as to purchase**

Sec. 13. It shall be unlawful for any dealer, packer, processor or warehouseman to purchase or receive or handle any citrus fruit without requiring the person from whom such citrus fruit is purchased or received, to furnish a statement in writing of (a) the owner of said citrus fruit, (b) the grower of said citrus fruit, together with the approximate location of the orchard where said fruit was grown, (c) the date said fruit was gathered and by whose authority same was gathered, and such records shall be kept in a permanent book or folder and shall be available to inspection by any interested party.

**Commissioner's power and authority in enforcing act**

Sec. 14. For the purpose of enforcing the provisions of this Act, the Commissioner is hereby vested with full power and authority and it shall be his duty, either upon his own initiative or upon the receipt of a properly verified complaint, to investigate all alleged violations of this Act and for the purpose of making such investigation, he shall have, at all times, free and unimpeded access to all books, records, buildings, yards, warehouses, storage, and transportation and other facilities or places in which any citrus fruit is kept, stored, handled, processed or transported, and in furtherance of such investigation either the Commissioner in person or through his authorized representatives, may examine any portion of the ledger, books, accounts, memorandum, documents, scales, measures, and other matters, objects or persons pertinent to such alleged violation under investigation. The Commissioner shall take such action and hold such public hearings as in his judgment are shown to be necessary after such investigations, and shall take the proper action with reference to the cancellation or suspension of the license of any dealer hereunder shown to have been guilty of a violation of the

terms of this Act. Such hearings shall be held in the nearest city or town in the county where violations are alleged to have occurred. Any order made by the Commissioner with reference to the revocation or cancellation of any license granted under the provisions of this Act, shall be subject to review by a Court of competent jurisdiction.

Administration of this Act by Commissioner of Agriculture, see, also, article 1287-1, § 9.

#### **Records on handling fruit on consignment or commission**

Sec. 15. Where any citrus fruit is handled by any dealer upon a consignment or commission basis, unless otherwise agreed in written contract between the dealer and owner, then the dealer shall, upon demand of the seller, or owner, his agent or representative, furnish said owner or seller, his agent or representative, a complete and accurate record showing, among other things, date of sale, to whom sold, the grade and selling price of said fruit, together with itemized statement showing what expenses of any kind or character incurred in the sale or handling of said citrus fruit including the commission, if any, to the dealer, and the failure or refusal of such dealer to furnish such information within ten (10) days after such demand by owner or seller, his agent or representative, shall constitute a violation of this Act.

#### **Dealer's contract to include commissions**

Sec. 16. If a dealer handles citrus fruit by guaranteeing a producer or an owner a minimum price, but at the same time handles the citrus fruit for the account of the producer or owner, said dealer shall include in his contract with the producer or owner, the maximum amount which he shall charge for commissions and/or service, or both, in connection with said citrus fruit so handled.

#### **Settlements on grades and quality referred to in contract**

Sec. 17. All citrus fruit except that obtained and handled by dealers, solely on a consignment basis without any price guarantee, shall be settled for by every dealer on the basis of the grade and quality which is referred to in the contract pursuant to which the dealer obtained possession or control of such citrus fruit, unless such citrus fruit has been inspected by a State or Federal inspector in the State of Texas and found to be of a different grade or quality than that referred to in said contract, in which event same shall be settled for on the basis of the grade and quality determined by such inspector. But nothing herein shall prevent the parties in lieu of such an inspection, from agreeing in writing only that the grade or quality of any of such citrus fruit was different from that referred to in the contract. Failure of the dealer to settle with a producer or seller on grade and quality in the manner herein provided, shall constitute a violation of this Act and be punishable as hereinafter provided, and in addition shall be cause for revocation of license.

#### **Investigations by commissioner**

Sec. 18. Repealed. Acts 1939, 46th Leg., p. 41, § 9.

#### **License fees to constitute dealers fund**

Sec. 19. All license fees collected under the provisions of this Act shall be deposited with the Treasurer of the State of Texas, to be held by him in a special fund to be known as "Citrus Dealers Act Fund" and such fund shall be used on the order of the Commissioner when necessary



to defray the expenses of the administration of this Act and same is hereby appropriated for said purpose.

**Venue of suits**

Sec. 20. The venue of any and all criminal acts and civil suits instituted under the provisions of this Act shall be in the county where the violation occurred or where the citrus fruits were received by the dealer, packer or warehouseman.

**Penal provision**

Section 21 of this Act being a penal provision is published as Penal Code, art. 1700a-3.

**Construction as to application of act**

Sec. 22. The provisions of this Act shall not apply to a retailer of citrus fruit nor to any person shipping less than six (6) standard boxes of citrus fruit in any one separate shipment nor shall this Act apply to noncommercial shipments by express. As amended Acts 1939, 46th Leg., p. 41, § 11.

**License of dealers selling own crop**

Sec. 23. Any citrus grower who handles and markets only citrus fruit grown by him, shall file an application for a license as a dealer in citrus fruit and upon so filing said application with the Commissioner of Agriculture of the State of Texas in the form prescribed, he shall be entitled to a license as a minimum dealer of citrus fruit; i. e., one handling not in excess of one thousand (1000) standard boxes, or the equivalent thereof, per twelve-month period and said license shall be issued to him without the payment of any fee or the posting of any bond and he shall thereupon be entitled to handle, market, sell, and dispose of his citrus fruit in accordance therewith subject to the pertinent provisions of this Act.

**Fruit to show origin**

Sec. 24. All citrus fruit grown in Texas and marketed in accordance with this Act shall, when in its original perishable form, be so labeled as to show its Texas origin.

**Exemption from bond; penalty**

Sec. 25. Any person who purchases citrus fruit only from dealers duly qualified as such under this Act, and pays therefor prior to or at the time of delivery or taking possession of such citrus fruit so purchased in current money of the United States, shall be exempt from giving the bond provided for in this Act and such person shall indicate on his application for license that he desires to operate as a cash buyer, buying only from dealers duly qualified as such under this Act, in accordance with the provisions of this Section and thereupon such person shall be entitled to a license as a cash citrus dealer, purchasing only from dealers duly qualified under this Act, upon the payment by such applicant of the license fee as required under this Act. Such dealer shall be subject to all the pertinent provisions of this Act. Any violation of this Section shall be deemed a misdemeanor and be punishable, as provided in Section 21 of this Act.

Any producer handling or dealing in his own products exclusively, shall be licensed, upon application, by the Commissioner of Agriculture

without charge and without being required to give a bond. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1911, ch. 32, § 1.]

Effective Oct. 27, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

#### Director and examiner; appointment; salary

Sec. 26. [Repealed by Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, § 2.]

Effective 90 days after May 22, 1937, date of adjournment of Regular Session of the 45th Legislature.

Emergency section. See note under article 1287-1, § 9, post.

This section was amended by Acts 1937, 45th Leg., p. 926, ch. 443, § 9a, but by Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, § 1, the amendment was stricken out, and by section 2 of the same Act, section 26 of this article was repealed.

#### Applicable to Texas Citrus Zone only

Sec. 27. The terms of this Act pertaining to necessity for and collection of license fees shall apply only to those entering into, or to those doing business in the Texas Citrus Zone, as said area is defined in Section 1, of House Bill No. 553, Chapter 350, General Laws of Texas, Regular Session, 1931.<sup>1</sup>

<sup>1</sup> Penal Code, art. 1700a-2.

#### Partial invalidity

Sec. 28. If any section, sentence, clause, phrase, or portion of this Act shall be held unconstitutional, then such holding shall not affect the validity of the remainder thereof, but same shall remain in full force and effect. Acts 1937, 45th Leg., p. 464, ch. 236.

Effective 90 days after May 22, 1937, date of adjournment.

Section 29 of this Act declared an emergency making the act effective on and after its passage.

1939 Amendment effective June 30, 1939.

Sections 12 and 13 read as follows:

"Sec. 12. Should any word, phrase, sentence, paragraph, or section of this Act be declared unconstitutional, it is hereby declared to be the intention of the Legislature to have passed the remainder of this Act in its entirety despite any such holding as to unconstitutionality.

"Sec. 13. Nothing in this Act shall ever be construed as amending, modifying, suspending, or repealing any of the laws of this State defining and prohibiting trusts, monopolies, and conspiracies against trade, with particular reference to Chapter 3, Title 19, Penal Code of this State and Title 126, Revised Civil Statutes of Texas, 1925; and should this Act in any manner conflict with or alter, repeal, change, modify or affect, or attempt to alter, repeal, change, modify or affect the above-mentioned statutes or any sentence, section,

clause, phrase or word thereof, this entire Act shall fall and be held for naught."

Section 14 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the purchasing, handling, sale, and accounting of sales of citrus fruit grown in the State of Texas; defining terms as used herein; providing for bond and license for citrus fruit dealers; prescribing and fixing duties and powers of the Commissioner of Agriculture with reference to the Act and its operation and enforcement; defining offenses and prescribing penalties for the violation of this Act; providing for the appointment of a director and examiner; fixing salaries and other regulations; providing the terms of this Act shall apply only to those entering into, or doing business in the Texas Citrus Zone, as defined in Section 1, of House Bill No. 553, Chapter 350, General Laws of Texas, Regular Session, 1931; providing a saving clause, and declaring an emergency. [Acts 1937, 45th Leg., p. 464, ch. 236.]

**Art. 118c—1. Tomato Standardization and Inspection Act—Name of Act**

This Act shall be known and may be cited as the "Tomato Standardization and Inspection Act."

**Preamble**

In order to provide a means by which producers and shippers of tomatoes may secure prompt and efficient inspection, classification, and grading of tomatoes at reasonable cost, and because the Legislature of the State of Texas recognizes that the standardization of tomato shipments through the proper grading and classification of tomatoes, by prompt and efficient inspection under competent authority, will confer benefits upon growers, shippers, carriers, receivers, and consumers, in that the certification by competent authority will furnish the grower and shipper of such products with prima facie evidence of the quality, quantity, and condition of pack of the product so certified, and because such certification will guarantee to the carrier and receiver the quality of products carried and received by them and will assure the ultimate consumer of the quality of products delivered to him, this Act is passed.

**Seasonal Limitation**

The provisions of this Act shall be effective during the Texas tomato-marketing season. The phrase "Texas Tomato Marketing Season" as the same is used in this Act shall be construed to mean the period from the first day of April to the fifteenth day of July in each calendar year.

**Authority of commissioner**

Section 1. The inspection and certification of grade, size, pack, and marking and the designation of containers of tomatoes shall be under the direction of the Commissioner of Agriculture of the State of Texas, hereinafter called the Commissioner.

**Definitions**

Sec. 2. For the purposes of this Act the following terms, when used in this Act, or the rules, regulations, and orders made pursuant thereto, shall be construed, respectively, to mean:

"Commissioner": The Commissioner of Agriculture of the State of Texas.

"Cooperative Agreement": That certain agreement in regard to shipping point inspection service, effective October 1, 1931, made by and between the Texas Department of Agriculture and the Bureau of Agricultural Economics, United States Department of Agriculture, and all amendments thereto, or any additional and/or supplementary agreements hereafter made by and between the Texas Department of Agriculture and the Bureau of Agricultural Economics of the United States Department of Agriculture; said agreements being duly authorized by Public Statute Number 717, of the 71st Congress. (United States Statutes at Large.)<sup>1</sup>

"Inspector," "Agent," or "Employee": Any employee of the Department of Agriculture of the State of Texas and/or the Department of Agriculture of the United States of America and/or of the Inspection Service of the Federal Bureau of Agricultural Economics duly authorized by either of the agencies aforesaid to inspect, grade, or certify for shipment tomatoes within the State of Texas.

"Ship": The transportation of tomatoes by rail, water, automobile, truck, trailer, or any other vehicle.

"Grade," "Standard," "Classification": The grades, standards, and classifications as to size, pack, and marking of tomatoes adopted and

promulgated by the Department of Agriculture of the United States of America and such other and different grades, standards, and classifications as the Commissioner may adopt which are not directly in conflict therewith.

"Cooperative Financing Plan": That system of collecting and financing the expenses and requirements of inspection set out in and made a part of the Cooperative Agreement; it being specifically provided that this Act shall be self-financing and that no appropriation shall be made by the Legislature of the State of Texas for the enforcement thereof.

"Dealer" and "Shipper": Any person, firm, partnership, corporation, or association of persons packing and/or delivering for transportation to any transporting medium tomatoes in commercial quantities, as the term "commercial quantities" is hereinafter defined.

"Commercial Quantities": More than five hundred (500) pounds of tomatoes packed and/or shipped and/or sold for packing and/or shipment.

"Notice": Any notice provided for in this Act to be given to any person, firm, partnership, corporation, or association of persons shall be in writing, unless hereinafter otherwise specifically provided.

"Person": When used herein, shall be construed to mean any individual, firm, partnership, corporation, or association of persons.

"Inspection Certificate": The joint Federal-State Inspection Certificate, as provided in Section "c" of Paragraph 9, of the Cooperative Agreement.

"Deceptive Pack": Any container or sub-container of tomatoes used within this State having imprinted, inscribed, or otherwise placed thereon any marking designating any grade, standard, count, arrangement, and/or pack which does not truly represent the grade, standard, and count, arrangement, and/or pack therein contained.

1 46 Stat. 1242.

#### Exclusions

Sec. 3. The following tomatoes are hereby specifically excluded from the terms and provisions of this Act, and no inspection or certification thereof shall be required:

(A) Tomatoes sold or delivered by the grower thereof unpacked and unmarked to any person for packing and resale.

(B) A sale of a crop or any part thereof in bulk by a producer thereof to a packer for grading, packing, processing, or storing.

(C) No provision of this Act shall be construed to prevent a grower or packer from manufacturing tomatoes into any by-product thereof or from selling the same unpacked or unmarked to any person actually engaged in the operation of a commercial by-product plant when the purpose of such sale is the conversion of such agricultural commodity into a by-product for resale.

(C-2) The Commissioner may, in his discretion, issue to any grower of tomatoes who permits his entire crop of tomatoes to ripen on the vine, and markets the same as ripe tomatoes, a permit to personally transport and sell same to retail merchants or consumers, only tomatoes produced by him, provided that the said Commissioner may cancel said permit when in his judgment the same has been abused.

(D) The requirements of this Act shall not be applicable to sales of tomatoes in lots less than commercial quantities, as the term "commercial quantities" is in this Act defined.

#### Inspection

Sec. 4. When any person within this State has in his possession or control any tomatoes for the purpose of packing for shipment in com-

mercial quantities the said tomatoes, such person shall give due and timely notice (said notice may be oral, written, or by telephone) to the Commissioner, his agent, inspector, or employee, as to the time and place of the packing and shipping of said tomatoes, or shall report his intention to pack and ship the said tomatoes to the Inspection Station nearest the point of loading, whereupon the Commissioner, his inspector or employee, thereto duly authorized, shall proceed to the designated packing and/or shipping point and shall inspect the tomatoes proposed to be shipped, and shall, after due and proper inspection, deliver to said dealer or shipper his certificate of inspection; said inspection certificate so delivered shall in all things conform to the inspection certificate provided for in the cooperative agreement; inspections under this Section, as to size, pack, marking, and type of container used shall be in conformity with the rules and regulations adopted and prescribed by the Commissioner relative thereto.

#### **Certification required**

Sec. 5. From and after the effective date of this Act, it shall be unlawful for any dealer or shipper to deliver to, or for any private, contract or common carrier to accept for shipment, or to transport in commercial quantities, any tomatoes, unless the tomatoes so shipped shall be accompanied by the certificate of inspection provided for in Section 4 of this Act, and any shipper, private contract or common carrier shall have the right and may reserve the right in any receipt, bill of lading, or other contract of purchase or memoranda of the same, to reject for shipment any tomatoes not accompanied by the certificate of inspection provided for in Section 4 of this Act. It is specifically provided that any private, contract or common carrier shall reject any tender of tomatoes for shipment when the inspection certificate accompanying the same shall show on its face that the tomatoes tendered are not in compliance with this Act.

#### **Minimum standards required**

Sec. 6. From and after the effective date of this Act, no person within an area in which this Act is operative shall pack for sale, consign for sale, or sell or deliver to any transporting agency within this State in commercial quantities, any tomatoes unless the said tomatoes shall conform to the United States standards, grades, or classifications by this Act required, or the grades or classifications promulgated by the Commissioner pursuant to his authority herein granted.

#### **Additional grades authorized**

Sec. 7. The Commissioner is hereby authorized, in his discretion and if necessity requires, to adopt, prescribe, and promulgate other, different and additional grades of tomatoes, provided that such other and different standards and grades shall not conflict with the United States grades herein adopted. The Commissioner is further authorized to issue rules and regulations relating to standards, grades, pack and marking of tomatoes, as well as to containers and sub-containers to be used in the packing and shipping thereof.

#### **Publication of orders, protest and appeal**

Sec. 8. The Commissioner shall cause to be published in newspapers of general circulation in counties affected by this Act within this State such rules and regulations as he desires to promulgate under the terms of this Act. Any person aggrieved by any rule or regulation of the

Commissioner so published, shall, within fifteen (15) days from and after the publication thereof, file his protest with the Commissioner. Such protest shall contain a clear and concise statement of the reasons therefor. The Commissioner shall set a date for a hearing, said date to be not less or not more than ten (10) days from and after the filing of said protest. The Commissioner or his agent or employee thereunto duly authorized, shall hold said hearing; said hearing shall be public in nature, and the Commissioner is authorized to hear testimony on the said protest, whereupon the Commissioner shall make his ruling upon the evidence introduced. Any person aggrieved by ruling of the Commissioner on the hearing of any protest under this Act, may, within ten (10) days from and after final decision by the Commissioner, have his appeal from the Commissioner's order to any Court of competent jurisdiction within this State; if no appeal is taken from the Commissioner's order within the ten-day period herein stipulated, the order of the Commissioner shall become final; it is specifically provided that no appeal taken from an order of the Commissioner shall operate in effect to suspend this law or any order of the Commissioner issued pursuant thereto, pending final determination of said appeal.

#### Containers

Sec. 9. The Commissioner is hereby authorized to prescribe containers for use in the shipment of tomatoes and is authorized to promulgate and publish rules and regulations relative to the use of containers for the shipment of tomatoes in the State of Texas; the rules and regulations adopted by the Commissioner shall conform to Article 109, of Chapter 6, Revised Civil Statutes of Texas, 1925; the Commissioner is, however, hereby authorized to provide for and adopt other and different containers, provided that the use of such other and different containers is not prohibited under any Statutes of the United States, the rules of the Interstate Commerce Commission, or the regulations of the United States Department of Agriculture; no container or sub-container used in the packing and/or shipment of tomatoes within this State shall have imprinted or inscribed or otherwise placed thereon any designation of grade, standard, count, arrangement, or pack which is false and misleading; this provision shall be construed to prohibit, from and after the effective date of this Act, the use of any container of tomatoes bearing any markings required by this Act or any designation of brand, trade-mark, quality, standard count arrangement, or grade, unless all markings which do not properly and accurately apply to the products therein packed, shall first be completely removed, erased, or obliterated.

#### Inspection contributions

Sec. 10. It is provided that this law shall be self-financing and that the Legislature shall make no appropriation for the enforcement thereof; the Commissioner is hereby authorized and empowered to enter into agreements with the United States Department of Agriculture and the Inspection Service of the Federal Bureau of Agricultural Economics, relative to the amounts of contributions to be received from dealers and shippers for inspecting and grading services under the terms and provisions of this Act; it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided under the Cooperative Agreement, provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspection and grading tomatoes under the Cooperative Agreement; the amount of contribution for each different service of

an inspection and grading rendered may be different, but in no event shall the contribution for inspection of tomatoes exceed Six Dollars (\$6) per carlot for inspection or grading service rendered in a regular packing house, or at a regular loading point; it is specifically provided that any regular inspection or grading service made or performed at a point distant from a packing shed or loading point, shall be for an amount sufficient to cover the actual cost of such inspection and/or grading service; all contributions for inspection or grading services rendered shall be paid and delivered to the inspector by the person packing or making the shipment prior to the delivery of the certificate of inspection; whenever any person so packing and/or shipping tomatoes fails or refuses to pay the contribution prescribed for the services rendered, the inspector shall withhold delivery of the inspection certificate until the prescribed contribution is paid; no inspector, agent, or employee shall charge or collect a greater sum than the prescribed contribution for the services rendered; all moneys contributed for services of inspection and/or grading under the terms and provisions of this Act shall be handled and disbursed under the terms of the Cooperative Agreement; the County Auditor of any County, in which this Act is operative, shall have access to the financial records, books, vouchers, and reports of the chief inspector at all times and shall have the authority to make an audit of such books when, in his judgment, an audit shall be deemed wise, and, upon written request of the Commissioner, said County Auditor shall audit and make his report in writing to the Commissioner regarding the fiscal affairs of the contribution account.

#### Penalties

Sec. 11. From and after the effective date of this Act, it shall be unlawful for any individual, firm, partnership, corporation, or association of persons to:

(A) Wilfully or knowingly interfere with the Commissioner or any agent, inspector or employee, as these terms are in this Act defined, in the performance of their duties under this Act;

(B) To ship any tomatoes without first obtaining the inspection certificate required under the terms and provisions of this Act;

(C) Knowingly and wilfully deliver to any transporting medium or agency any tomatoes "deceptively packed";

(D) Use any container or sub-container in the packing and/or shipping of tomatoes which has imprinted, inscribed or otherwise placed thereon any designation of grade, standard, size, count, or pack which is false and/or misleading;

(E) Use, in the shipment of tomatoes in or from the State of Texas, any container or sub-container, the use of which is not authorized by law and/or the rules, regulations, and orders of the Commissioner;

(F) Falsify, forge, or change any inspection certificate required under the terms and provisions of this Act;

(G) To wilfully and knowingly fail and refuse to obey any order, rule, or regulation issued by the Commissioner pursuant to his authority granted under the terms and provisions of this Act;

(H) It shall be unlawful for any transporting agency or medium or agent of any transporting medium to accept for transportation any tomatoes when the inspection certificate accompanying and relating to such tomatoes shows on its face that the tomatoes so delivered to such transporting medium are not properly certified for transportation;

(I) It shall be unlawful for the Commissioner, his agents, inspectors and/or employees to engage in business as dealers in tomatoes, save and except that this Section shall not be construed to in anywise prohibit

the Commissioner, his agents, inspectors and/or employees from selling, in the capacity of producers, of tomatoes grown and produced by them.

Any person violating any of the terms or provisions of this Act shall be guilty of a misdemeanor and on conviction shall be fined not to exceed Two Hundred Dollars (\$200).

#### Act Cumulative

Sec. 12. This Act shall be cumulative of all laws now operative in the State of Texas relating to the inspection and/or grading and/or standardization of tomatoes, provided that all laws or parts of laws specifically conflicting herewith are hereby repealed.

#### Saving clause

Sec. 13. If any section, subsection, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional. Acts 1939, 46th Leg., p. 33.

Effective April 27, 1939.

Section 14 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act to be known as the "Tomato Standardization and Inspection Act" to be effective during the Texas Tomato Marketing Season as defined in the Act; providing for the standardization of tomatoes by means of the compulsory inspection, grading, classification, and marking thereof under the authority of the Commissioner of Agriculture of the State of Texas; defining certain terms; adopting the United States grades and standards for tomatoes and authorizing the Commissioner to adopt other different and additional grades and standards not directly in conflict therewith; directing and empowering the Commissioner to establish, promulgate, and publish rules and regulations to effectuate the terms and provisions of this Act; providing for the publication of rules and regulations of the Commissioner and appeal therefrom; prohibiting the Commissioner, his agents, inspectors, and employees from engaging in the business of buying and/or selling tomatoes; providing for inspection and certification of shipments of tomatoes in and/or from the State of Texas; defining the terms "inspectors and/or agents, and/or employees" of the Commissioner; providing for the form of certification; authorizing the Commissioner to enter into

cooperative agreements with the United States Department of Agriculture for the inspection and/or grading and/or certification of tomatoes; providing for the expenses of the enforcement of this Act by means of contributions from growers and/or shippers of tomatoes and/or by virtue of cooperative agreement between the Commissioner and the United States Department of Agriculture; providing that this law shall be self-financing and that no appropriation shall be required; limiting the amount of contribution for inspection; making notice to the Commissioner by packers and/or shippers of tomatoes and their intention to ship mandatory; providing that certificates issued under and by virtue of Act shall be prima facie evidence of the truth of their contents in all Courts of the State of Texas; authorizing the Commissioner to prescribe containers for use in the shipment of tomatoes and regulating the re-use of such container; defining "deceptive pack" and providing that "deceptive pack" shall be unlawful; making certain exclusions; providing for the proper marking of packages, parcels, and containers of tomatoes shipped in and/or from the State of Texas; providing penalties for violations of this Act; making this Act cumulative of all laws now on the Statutes of the State of Texas; repealing all Statutes or parts of Statutes directly in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., p. 33.



## CHAPTER SEVEN A.—PLANT DISEASES AND PESTS

<p>Art. 135a—2. Mexican fruit fly control and eradication; definitions [New].</p>	<p>Art. 135a—3. Insect pests and plant diseases—quarantine [New].</p>
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### Art. 135a—2. Mexican fruit fly control and eradication; definitions

Section 1. (1) This Act shall be known and may be cited as the Mexican Fruit Fly Control and Eradication Act.

(2) As used in this Act, unless otherwise apparent from the context:

(a) The present tense includes the past and future tenses; and the future, the present.

(b) The masculine gender includes the feminine and neuter.

(c) The singular number includes the plural and the plural, the singular.

(d) "Department" means the Department of Agriculture of the State of Texas.

(e) "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(f) "Section" means the Section of this Act unless some other Act is specifically mentioned.

(g) "Person" includes individual, partnership, firm, corporation, company, or association.

(h) "Sale" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

(i) The word "premises" as used in this Act shall mean any grove, orchard, farm, yard, lawn, or tract of land upon which citrus or other host fruit is grown, whether or not the same shall be enclosed, or any barn, storehouse, warehouse, shed, boxcar, truck, or any other building, receptacle, or conveyance whatsoever susceptible of use for the storage, packing, processing, or transportation of citrus or other host fruits.

(j) The words "host-free period," when used in this Act, shall be construed to mean a period of time during which no host fruits in any stage of development shall be produced or permitted to remain upon trees in the quarantined area. The Commissioner is hereby authorized to adopt the host-free period promulgated by the United States Department of Agriculture in the Citrus Quarantine Regulations governing Mexican fruit fly quarantine in the State of Texas, and this Act shall conform to such period as promulgated by the United States Department of Agriculture as to the beginning, continuance, and end of such host-free period.

(k) The words "host fruit," as used in this Act, shall be construed to mean fruits susceptible to infestation by the Mexican fruit fly, namely, mangoes, sapotas (including sapodillas and the fruit of all members of the family Sapotaceae and of the genus Casimiroa and all other fruits commonly called sapotas or sapotes), peaches, guavas, apples, pears, plums, quinces, apricots, mameys, ciruelas, and such other fruits as may in the future be found to be host to the Mexican fruit fly and are specifically declared to be host fruits by the Commissioner, and all citrus fruits except lemons, sour limes, calamondin, and normal-bloom citrus. The words "normal-bloom citrus," as used in this paragraph, shall be construed to mean that citrus which, because of its stage of development during the host-free period, will mature during the normal harvesting period. The "normal harvest period," as the words are used in this paragraph, shall be construed to mean that period of the year not within the host-free period. It is the intent of the Legislature and it is hereby spe-

cifically provided that all old crop fruit be removed from all premises in the quarantined area at the beginning of the annual host-free period:

(l) The words "fruit fly," as used in this Act, shall be construed to mean the insect known as the Mexican fruit fly, or *Anastrepha ludens*, Loew.

(m) The term "infested premises," as used in this Act, shall be construed to mean those premises upon which larvae of the Mexican fruit fly have been found or are known to exist.

(n) The "quarantined area," as the term is used herein, is hereby construed to mean those counties and parts of counties designated for fruit fly eradication or control by the Commissioner and proclaimed by the Governor of the State of Texas, as is herein provided.

(o) The "modified quarantined area" is hereby defined as meaning those counties or parts of counties which shall be designated as such by the Commissioner and proclaimed by the Governor of the State of Texas under the terms of this Act. The "free area" is hereby defined as meaning those counties or parts of counties which have not been designated by the Commissioner and proclaimed by the Governor to be quarantined or modified quarantined area.

#### Persons enforcing as peace officers

Sec. 2. (1) Any person in whom the enforcement of any provision of this Act is invested has the power of a peace officer as to such enforcement.

(2) The District or County Attorney of any county in which a violation of any provision of this Act occurs shall, upon the request of the Commissioner, his deputies, inspectors, any enforcing officer, or other interested person, prosecute such violation.

(3) Unless a different penalty is expressly provided, a violation of any provision of this Act is a misdemeanor.

(4) Whenever any notice, report, statement, or record is required by this Act, it shall be in writing, unless it is expressly provided that it may be oral.

(5) Whenever any notice, report, statement, or record is required by this Act to be kept or made in writing, it shall be in the English language.

(6) Whenever any power or authority is given by any provision of this Act to any person, it may be exercised by any deputy, inspector, or agent duly authorized by him, unless it is expressly provided that it shall be exercised in person.

(7) As used in this Act, the word "shall" is mandatory and the word "may" is permissive.

(8) The Commissioner may enter upon any premises to inspect the same or any tree, plant, shrub, or fruit growing or stored therein.

(9) The Commissioner is hereby authorized to promulgate and adopt rules and regulations for carrying out those provisions of this Act which he is directed and authorized to administer and enforce.

#### Commissioner of Agriculture; powers and duties

Sec. 3. (1) It shall be the duty of the Commissioner to control and/or eradicate the Mexican fruit fly in the State of Texas and to protect all premises, as defined herein, within the State of Texas from such pest. The Commissioner shall adopt necessary rules and regulations to be proclaimed by the Governor of the State of Texas for carrying out the provisions of this Act.

(2) It shall be the duty of the Commissioner, when advised of the existence of Mexican fruit fly within any county or part of county in this

State, to certify such fact to the Governor of Texas who shall then proclaim such county or part of county to be quarantined, and such county or part of county shall thereafter be dealt with by the Commissioner as is herein provided. The following Counties and parts of Counties in the State of Texas are hereby declared to be quarantined area and are hereby quarantined because the Mexican fruit fly is therein known to exist, to wit: the Counties of Cameron, Hidalgo, and Willacy.

(3) The Commissioner is hereby authorized, when, in his judgment, the exigencies of the situation so require, to designate a modified quarantined area, which designation is to be by the Commissioner certified to the Governor to be proclaimed as such. The Commissioner shall adopt such rules and regulations as are necessary for the regulation of such modified quarantined area.

(4) It shall be the duty of the Commissioners Court of any county in a quarantined or modified quarantined area to appoint a committee of five (5), such committee to be known as the "Citrus Quarantine Advisory Committee," and said committee shall be composed of four (4) growers of citrus fruits, to be nominated and appointed by said Commissioners Court subject to the approval of the Commissioner, and one representative of the Commissioner to be nominated by said Commissioner and appointed by said Court. It shall be the province of said committee, when advised by the Commissioner that an infestation exists within any premises in said county, to determine the extent of such infestation, and when the extent of such infestation shall have been determined by such quarantine advisory committee, such committee shall recommend to the Commissioner the procedure for eliminating such infestation.

(5) Whenever any county, part of county, district, or territory is designated for fruit fly control and/or eradication by the Commissioner and proclaimed by the Governor, as herein provided, said proclamation shall contain a provision quarantining said county, part of county, district, or territory, and the effect of such quarantine shall be to quarantine said county, part of county, district, or territory and all premises therein of each individual, owner, lessee, renter, tenant, and occupant in the designated county, part of county, district, or territory without specifically designating said land or premises. The quarantine of such area shall be considered as continuing until said quarantine has been modified or removed by the Commissioner.

(6) When any premises within the quarantined area are found by an accredited entomologist to be infested, as the term is defined herein, such entomologist shall certify the fact of such infestation to the Commissioner. It shall thereupon be the duty of the Commissioner to satisfy himself as to the existence of such infestation and the extent thereof. The Commissioner may refer the fact of such infestation to the Citrus Quarantine Advisory Committee of the county in which such premises are located, or if such premises be located in more than one county, then to the Citrus Quarantine Advisory Committee of any county in which a portion of such premises lies situate. It shall be the duty of the Commissioner to decide the manner best suited to the control and/or eradication of such infestation, taking into consideration the recommendations of the Citrus Quarantine Advisory Committee as to the procedure to be followed. The findings of the Commissioner, together with the directions of the Commissioner, shall be reduced to writing and a copy of such instrument in writing shall be served upon the owner of said premises immediately; such directions shall be mandatory and the owner of said premises shall immediately proceed to comply with such order as regards said premises. The failure to obey such mandatory order of the Commissioner and to place such premises in compliance therewith shall, from and after the ef-

fective date of this Act, be a misdemeanor and any person disobeying such mandatory order of the Commissioner shall, on conviction, be fined not more than Two Hundred Dollars (\$200).

(7) The maintenance of any premises, as herein defined, within the fruit fly quarantined area in an unhusbandlike or unsanitary condition is hereby declared to be a public nuisance. The words "unhusbandlike and unsanitary," as used herein, shall be construed to mean the maintaining of such premises with host fruit upon trees located on such premises during the host-free period, or the maintaining of such premises with fallen, refuse, or cull fruit upon the ground, such fallen, or refuse, or cull fruit having been permitted to remain upon the ground and/or premises for a period of seven (7) days during the harvest period. It is the intention of the Legislature that the cleaning of such premises once in each seven-day period within such harvest period shall be mandatory and any person who, within the harvest period, as the same is in this Act defined, shall fail to clean the fallen, or refuse, or cull fruit from his premises at least once in each successive seven-day period, and dispose of the same in a manner satisfactory to the Commissioner, or bury the same at a depth of not less than eighteen (18) inches beneath well tamped soil, or who shall maintain any premises with host fruit upon the trees located on such premises during the host-free period, shall be guilty of maintaining a public nuisance and such person shall, on conviction of maintaining such public nuisance, be fined any sum not to exceed Two Hundred Dollars (\$200).

(8) The Commissioner is hereby authorized to direct owners, part owners, and caretakers of premises subject to the terms of this Act, to place such premises in husbandlike and sanitary condition, said direction to be in writing and signed by said Commissioner or his agent, which signature may be written or stamped thereon; the same shall be dated and shall direct said owner, or part owner, or caretaker, whether such owner, part owner, or caretaker be a person, firm, or corporation, to place such premises in a sanitary condition under the supervision of an inspector of said Commissioner. In the event that the owner of said premises be a nonresident of the State of Texas, the direction of the Commissioner as to the placing of such premises in a sanitary condition shall be sufficient if ten (10) days' notice be given to such nonresident owner by registered mail by said Commissioner and/or his agent or inspector.

(9) Whenever the Commissioner shall issue sanitation directions in writing to any owner, part owner, or caretaker of any premises which are located in the quarantined area, it shall be the duty of said owner, part owner, or caretaker to place such premises in a sanitary condition as directed in such written directions. Any owner, part owner, or caretaker of any premises, as herein defined, who fails or refuses, after the expiration of a ten-day period of notice, as provided herein, to place such premises in a sanitary condition, as herein defined, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars (\$200). From and after the effective date of this Act, the maintenance by any person on any premises within the quarantined area of any growing host fruit, as herein defined, within the host-free period, as herein defined, shall be unlawful, and any person convicted of a violation of this provision shall be fined not more than Two Hundred Dollars (\$200).

#### Appeals from orders of Commissioner

Sec. 4. (1) Any person, firm, or corporation aggrieved by any order of the Commissioner may appeal to any Court of competent jurisdiction within the county in which such premises lie situate.

(2) Owners and caretakers of premises subject to sanitary directions of the Commissioner under the provisions of this Act, shall furnish all necessary labor at their own expense for placing such premises in a husbandlike and sanitary condition. Administrators, executors, and guardians are hereby declared to be the caretakers of the premises within their jurisdiction and control and shall be held responsible for the execution of all sanitary directions issued by the Commissioner relating in whole or in part to the estate under their control by reason of said administration or guardianship. Husband and wife shall be held jointly and severally liable for the execution of sanitary directions of the Commissioner relating to their community estate, and the husband shall be held liable for the execution of such directions relating to his separate estate, and the wife shall be held liable for the execution of such directions relating to her separate estate, providing that the husband shall be held liable for failure to follow directions of the Commissioner relating to the separate estate of the wife, and the wife shall be held liable for the execution of directions of the Commissioner relating to the separate property of the husband, if either is the caretaker of such premises belonging to the separate estate of the other.

(3) When the Commissioner ascertains that a person, firm, or corporation is the owner, part owner, or caretaker of any premises which are subject to sanitary direction of the Commissioner under the provisions of this Act, and such directions are issued by the Commissioner, as herein provided, it shall be presumed that, at and on the date of the expiration of the notice period herein provided, said person, firm, or corporation was still the owner, or part owner, or caretaker, as the case may be, of such premises, and it shall only be necessary for the State to allege and prove that at the time of the service of said written sanitary directions, said person, firm, or corporation was the owner, or part owner, or caretaker of such premises subject to the sanitary directions of the Commissioner.

(4) Upon the failure of any owner, part owner, or caretaker to comply with a written sanitary order of the Commissioner, under the terms and provisions of this Act, in the manner and within ten (10) days from and after the receipt of such written sanitary order, it shall be the duty of the Commissioner and/or his agents or inspectors to institute proceedings in a Court of competent jurisdiction in the county in which such premises lie situate to have such premises declared a nuisance by law. No cost bond shall be required of the Commissioner or his agents in the filing of such proceeding. The Commissioner and/or his agents or inspectors may, if the circumstances so warrant, petition the Court to appoint a receiver for such premises. The Court shall hear the petition with regard to such premises in termtime or in vacation, and if heard in vacation the same may be as fully disposed of and all issues determined in vacation the same as in termtime. The owner of such premises shall give such notice as the Court shall deem necessary. If, in the judgment of the Court, such premises are found to be a public nuisance, it shall be the duty of the Commissioner, his agents, or inspectors to go upon such premises with a sufficient number of helpers and to place such premises in compliance with the directions of the Commissioner. The Commissioner, his agents and/or inspectors shall be allowed the sum of not to exceed Twenty-five (25) Cents per man hour for each and every hour actually expended in placing such premises in compliance with the written directions of the Commissioner, together with an additional fee in the sum of Twenty-five Dollars (\$25), which is hereby declared to be a reasonable recompense for the time involved in the execution of such compliance order, and is in no wise to be construed as a penalty. The afore-

said sum of Twenty-five Dollars (\$25) shall be delivered to the Commissioner, who shall place the same in a fund to be known as the "Orchard Sanitation Fund" and the same shall be expended in the enforcement of the provisions of this Act by the Commissioner. A lien is hereby given said Commissioner, his agents, and/or inspectors upon all citrus fruit growing or standing on such premises for the purpose of securing the payment of the aforesaid sums, and said officers are authorized to retain in their possession and sell at public sale to the highest bidder at any time at the courthouse door of said county such citrus fruit as may be found upon said premises for the purpose of paying the fees herein provided, the residue, if any, to be paid to the owner of said premises or paid to the County Treasurer subject to the order of the owner, provided, however, that if, in the judgment of the Court, a receiver for such premises be named, and such receiver shall be named, then the provisions of this Section as to the sale of fruit found upon said premises shall be executed by said receiver and the fees herein provided for such services as shall be rendered by the Commissioner, his agents, and/or inspectors, shall be paid to the Commissioner by said receiver and the residue, if any, shall be paid by said receiver to the owner of said premises or to the County Treasurer subject to the order of said owner.

(5) In lieu of the sale of said citrus fruit, as provided in the preceding Section, said officer may fix said lien by filing with the County Clerk of the county in which said premises are located, a sworn statement of said indebtedness, together with a description of the property or properties upon which said lien is to be placed. Such lien shall be filed within thirty (30) days after the enforcement of the directions of the Commissioner by said officers, and suit shall be filed in a Court of competent jurisdiction against the owner of said premises within twenty-four (24) months after filing said statement for the collection of said account and the foreclosure of said lien. No cost bond shall be required of said officer filing said suit, nor of any person to whom said account may be assigned. The Court shall enter judgment for said debt with interest and costs of suit and foreclosing said lien on such premises as the Court may deem necessary for defraying said expenses and paying said fees to said officer and Court costs. Said officer may file a separate statement and separate suit covering each necessary compliance with a written direction of the Commissioner, or may wait until a number of them accrue and sue in the aggregate in one suit and a statement may be filed covering all of said necessary compliances with written directions of the Commissioner.

#### **Peace officers may perform acts of Commissioner**

Sec. 5. (1) Where, by any provision of the two (2) preceding Sections of this Act, the Commissioner, his agent, and/or inspector is authorized to perform any act, the same shall also include any and all peace officers of this State who may be legally authorized by any law to perform service in such territory.

(2) Any resident or residents of any county or part of county in which fruit fly control and/or eradication is being conducted may bring mandatory injunction to compel owners, part owners, or caretakers to place their premises in sanitary condition under the provisions of this Act after said owner, part owner, or caretaker has failed or refused, or is threatening, or has threatened to refuse or fail to comply with the written directions of the Commissioner, and the Court may, in termtime or vacation, upon notice to the defendant, hear and determine the same, and if the Court finds that said owner, part owner, or caretaker has been served with a written sanitary direction from the Commissioner, and that the defendant's premises are subject to said order, and that the material

allegations in plaintiff's petition are true, the Court shall enter its order commanding said owner or caretaker to instantly comply with the written directions of the Commissioner, and upon failure of said person to comply with said written directions of the Commissioner, he shall then be held liable for contempt of Court and punished accordingly.

(3) Whenever the Commissioner ascertains that there are premises in any county in which fruit fly control and/or eradication is being conducted under the provision of this Act for which he can locate no owner or caretaker, said Commissioner is hereby authorized to seize the citrus fruit growing or standing on said premises and to sell the same in the manner and for the purposes heretofore provided.

(4) Any person, firm, or corporation, or transportation company who shall haul, or truck, or otherwise move any citrus fruit from any premises as herein described, or from any county, or part of county, or territory, or district which is under quarantine by virtue of this Act or by any order of the Commissioner of Agriculture of the State of Texas, or by a proclamation of the Governor of the State of Texas because of fruit fly infestation as provided for in this Act, in violation of said quarantine without a written permit or certificate of an inspector of the Department of Agriculture of the State of Texas, or inspector of the Bureau of Entomology and Plant Quarantine of the United States Department of Agriculture, or who shall so move into the State of Texas from any State, nation, territory, or area under quarantine for fruit fly infestation by the said Commissioner of Agriculture of the State of Texas, or by the United States Bureau of Entomology and Plant Quarantine, or by the sanitary authorities of the State, or nation, or territory from which they are moved without a certificate from the Commissioner of Agriculture of the State of Texas, or that having such permit or certificate from said Commissioner shall ship, truck, or in any manner transport such citrus fruit from said quarantined premises to any other place than the place designated by such certificate or permit, shall be fined not more than Two Hundred Dollars (\$200). Any owner, part owner, or caretaker of such premises or citrus fruit, who shall permit or allow such citrus fruit to be shipped or transported, or otherwise moved in violation of this Act without said permit or certificate, shall be deemed guilty of violating this provision the same as if he had personally shipped or transported such citrus fruit.

(5) Any resident of this State may bring injunction suit to compel the compliance with any provisions of this Act or restrain any threatened violation of same. Said injunctions and mandamus proceedings may be heard in vacation or termtime and if heard in vacation, the same may as fully be disposed of and all issues determined in vacation the same as in termtime. Notice of said hearing to the opposite party may be given under the direction of the Court, if, in the opinion of the Court, the ends of justice require such notice.

#### **Penalty**

Sec. 6. The violation of any of the terms or provisions of this Act is hereby declared to be a misdemeanor, and any person found guilty of the violation of any of the terms or provisions of this Act shall, on conviction, be fined not to exceed Two Hundred Dollars (\$200).

#### **Provisions cumulative**

Sec. 7. This Act shall be cumulative of all laws now on the Statutes providing for quarantine regulations and the inspection of plants, fruits, and shrubs to prevent the importation or dissemination of dangerous insect pests and plant diseases in this State.

## Severable construction

Sec. 8. If any section, subsection, sentence, clause, or phrase of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional. Acts 1937, 45th Leg., p. 486, ch. 247.

Effective May 1, 1937.

Section 9 of this Act declares an emergency making the act effective on and after its passage.

## Title of Act:

An Act making it the duty of the Commissioner of Agriculture of the State of Texas to control and/or eradicate the Mexican fruit fly in the State of Texas; providing a title for said Act; defining certain terms as used herein; providing a host-free period, and authorizing the Commissioner of Agriculture of the State of Texas to adopt the host-free period promulgated by the United States Department of Agriculture; defining host fruits and making certain exceptions; defining infested premises, as the term is used herein; designating a quarantined area; providing for the extension of the quarantined area by proclamation of the Governor of Texas; authorizing the Commissioner of Agriculture of the State of Texas to designate a modified quarantined area, and to provide rules and regulations appertaining thereto; defining the "free" area; authorizing the Commissioner of Agriculture of the State of Texas to adopt rules and regulations for carrying out the provisions of this Act; providing for a citrus quarantine advisory committee and designating procedure for appointment of such committee; providing procedure for dealing with infested premises; providing for the issuance of mandatory sanitation orders by the Commissioner, making the maintenance of premises in an unhusbandlike and unsanitary condition illegal, and providing a penalty; making the maintaining of premises with host fruit thereon during the host-free period illegal and providing a penalty; declaring maintenance of premises under certain conditions a public nuisance and providing a penalty; providing that failure to obey any order of the Commissioner is a violation of this Act and providing a penalty; enumerating persons to whom the

terms of this Act shall apply; providing for periodical cleaning of premises; providing for notice by the Commissioner to parties subject to sanitation orders; providing for an appeal by parties aggrieved; providing that ownership of premises shall be presumed under certain circumstances; providing for Court procedure by Commissioner to have premises declared a public nuisance; providing for full determination of nuisance question by Courts in vacation as well as termtime; providing for entrance upon premises by Commissioner and the placing of same in compliance with Commissioner's orders; providing that no cost bond shall be furnished by the Commissioner; providing for fees for Commissioner and his employees for execution of compliance orders; providing for an orchard sanitation fund and the expenditure thereof; providing for discretionary receiverships by Courts; providing for sale of fruit by Commissioner or receiver, and for the application of proceeds of such sales; providing for a lien, or liens, in favor of the Commissioner, and that same may be cumulative, and for the registration thereof; providing for suit to enforce such liens and that no bond be required of officer or assignee in the filing of same; providing that duties imposed on the Commissioner may be executed by his agents and/or inspectors; providing that parties damaged by noncompliance with terms of this Act may have injunctive remedy; providing for full determination as to injunctive relief in vacation as well as in termtime; providing procedure for dealing with premises whose owners are missing and/or unknown; providing for certification and regulation of citrus shipments intrastate and interstate, and within and without the quarantined area; making this Act cumulative; providing a saving clause; providing penalties, and declaring an emergency. [Acts 1937, 45th Leg., p. 486, ch. 247.]

## Art. 135a—3. Insect pests and plant diseases—quarantine

Section 1. If the Commissioner of Agriculture of this State, hereinafter called the "Commissioner," determines the fact that any dangerous insect pest or plant disease, new to and not heretofore widely distributed in the State, exists in any area outside of Texas, he is hereby authorized and it is made his duty, to establish, maintain, and enforce a quarantine at the boundaries of this State or elsewhere within the State against such infested area and shall prevent the movement from such quarantined



area or areas into this State or into any part of it of any plants, plant products, things or substances liable to disseminate the pests or plant diseases named in Section 2 hereof, provided that nothing herein shall be construed to prevent the movement of such plants, plant products, things or substances into this State from a quarantined area under such safeguards as the Commissioner shall deem adequate to prevent the introduction into this State of dangerous insect pests or plant diseases quarantined against.

Nothing in this Act shall be deemed to authorize the Commissioner or the Department of Agriculture to expend money without the State of Texas, or to send employees without the State of Texas, or to employ persons without the State of Texas. The provisions of this Act shall apply solely to diseases, pests and infections common to citrus fruit.

**Certain insect pests and plant diseases declared public menaces**

Sec. 2. The following named insect pests and plant diseases which are not known to be widely distributed in Texas, are hereby declared public menaces and their introduction into this State is hereby stated to be of serious jeopardy to the citrus industry and horticulture of Texas:

- Black scale, *Saissetia oleae*
- Branch-and-twigg borer, *Polycaon confertus*
- Long-tailed mealy bug, *Pseudococcus Longispinus*
- Orange-peel miner, *Marmara species*
- Withertip of lime, *Glocosporium Limeticolm*
- Scaly bark, *Cladosporium herbarum*

It is known that these pests and public nuisances occur in a widely distributed area of the United States, and the unregulated movement of citrus trees and fruits, which are host plants of these pests, into Texas would result in the distribution of the pests throughout the State.

**Shipments into state—Certificate of inspection**

Sec. 3. Provided that no person, partnership, or corporation outside the State shall be permitted to ship citrus nursery stock or citrus fruit into the State of Texas without first having filed with the Commissioner of Agriculture a certified copy of certificate of inspection issued by the proper authorities of the State in which the shipment originates; such certificate must show that the stock or the fruit to be shipped has been produced in a county known to be free of the above-mentioned pests or that the stock or fruit has been fumigated by a method that will render it free of pests infestation and such method must be approved by the Commissioner of Agriculture of this State.

**Shipments of citrus fruit or nursery stock—Certificate—Permit**

Sec. 4. No transportation company or common carrier shall receive, transport or deliver shipments of citrus nursery stock or citrus fruit originating without this State which do not bear shipping tags or labels showing the certificate of inspection of the State in which it originates, together with the Commissioner's permit from the State of Texas.

**Shipments not accompanied by certificate**

Sec. 5. No transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or deliver such trees or fruit, packages, bales, bundles, or boxes of trees or fruit, when not accompanied by copies of the certificates provided for by this Act. The agent of any such company or carrier shall

immediately report to the Commissioner of Agriculture any such shipment not so accompanied.

#### Penalty for violation

Sec. 6. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200). Acts 1939, 46th Leg., p. 55.

Effective 90 days after June 21, 1939, date of adjournment of Legislature.

Section 7 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 8 declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act authorizing and making it the duty of the Commissioner of Agriculture to establish, maintain and enforce a quarantine against any dangerous insect pest or plant disease not heretofore widely distributed within the State; providing that the Commissioner shall prevent the movement from such quarantined areas into this State of any plants, plant products, things or substances which may disseminate the pest or plant disease; providing for the movement of such plants, plant products, things or substances under certain safeguards; providing that nothing in this Act shall authorize the Commissioner or the Department of Agriculture to expend money without the State of Texas, or to send employees without the State of Texas, or to employ persons without

the State of Texas; providing the provisions of this Act shall apply solely to diseases, pests and infections common to citrus fruit; naming certain insect pests and plant diseases and declaring them public menaces; and prohibiting the movement of citrus trees or fruits from certain areas where such pests and diseases are known to exist; providing that the Commissioner of Agriculture shall issue certificates of inspection; prohibiting the movement of citrus nursery stock or citrus fruit without such certificate; providing certain exceptions; prohibiting the transportation of citrus nursery stock or citrus fruit originating without this State unless bearing a certificate of inspection of the State in which it originates; providing that transportation companies or common carriers shall not be liable for damages to the consignee or consignor for refusing to transport or deliver stocks, nursery stock or fruit when not accompanied by certificates; providing a penalty for the violation hereof; repealing all laws or parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., p. 55.

## CHAPTER EIGHT—EXPERIMENT STATIONS

### 1. STATE EXPERIMENT STATIONS

Art.

149g. Experimental station in El Paso district [New].

### 1. STATE EXPERIMENT STATIONS

Art. 146. Director of stations

Research for new uses for cotton, see article 165—4.

Art. 149g. Experimental station in El Paso district

Section 1. That the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to establish and maintain a horticultural and agricultural experiment station at some point within the limits of the El Paso irrigated valley in the State of Texas, for the purpose of making scientific investigations and experiments in the production of cotton, alfalfa, and farm crops, and fruits, berries, grapes, nuts, and vegetables; and for the development of information as to the best methods of management and use of irrigated soils and irrigation waters; and for conducting scientific experiments in animal husbandry, including the breeding, feeding, treating, and prepar-

ing for market of cattle, sheep, hogs, and other livestock, and in poultry raising, dairying, and bee culture, and for the purpose of studying the other impending horticultural and agricultural problems of that area.

Sec. 2. The Board of Directors of the Agricultural and Mechanical College is empowered to acquire a suitable site for the location of said horticultural and agricultural experiment station within the territory described in the next preceding Section of this Act containing such amount of land, not less than one hundred and sixty (160) acres, well adapted to the purposes aforesaid. The said Board of Directors is authorized to accept donations of land, water, and money for the establishment, equipment, and maintenance of said station.

Sec. 3. The horticultural and agricultural experiment station hereby provided for, shall be under the general direction and supervision of the Board of Directors of said Agricultural and Mechanical College of Texas, and shall be operated and conducted by the Director of Experiment Stations, as all other experiment stations are now conducted.

Sec. 4. It is especially provided, however, that unless there be contributed to the use and benefit of said horticultural and agricultural experiment station by persons interested in the establishment thereof, lands suitable for the purpose of said experiment station, in such acreage as to meet the requirements of said station, with water available for irrigation, or of such amount of money or other property as may be necessary to purchase a tract of land suitable for said purposes and having available water for irrigation purposes thereon, said horticultural and agricultural experiment station shall not be established. Acts 1937, 45th Leg., p. 450, ch. 227.

Acts 1937, 45th Leg., p. 450, ch. 227, became a law without Governor's signature and was filed April 26, 1937.

Section 5 of this Act declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act to authorize the Board of Directors of the Agricultural and Mechanical College of Texas to establish and maintain a horticultural and agricultural experiment station at some point within the limits of the El Paso irrigated valley in the State of Texas for the purpose of making scientific investigations and experiments in the production of cotton, alfalfa, and farm crops, and of fruits, berries, grapes, nuts, and vegetables and for the development of information as to the best methods of management and use of

irrigated soils and irrigation waters, and for conducting scientific experiments in poultry raising, dairying, animal husbandry, and bee culture; and of studying other impending horticultural and agricultural problems of that area; authorizing said Board of Directors to acquire a suitable site therefor, and to accept donations of land and money for said purpose, also irrigation water; providing that such experiment station shall be under the supervision of said Board of Directors, and providing that unless donations of land with available irrigation water or money for the purchase of same sufficient for such experiment station are made for said purposes, said experiment station shall not be established, and declaring an emergency. [Acts 1937, 45th Leg., p. 450, ch. 227.]

## CHAPTER NINE—SOIL CONSERVATION AND PRESERVATION

**Art.**

165a—4. State Soil Conservation Act—  
Short Title [New].

**Art.**

165a—5. Rent of county machinery to  
landowners in counties of 290,-  
000-320,000 [New].

Art. 165a—1. Repealed. Acts 1939, 46th Leg., p. 7, § 17. Eff. April 20, 1939

Art. 165a—2. Wind Erosion Conservation Districts; creation authorized

Acts 1939, 46th Leg., p. 7, § 17, set out under 165a—4, § 17, provides that this arti-

cle shall not be in anywise affected, impaired, or impinged thereby.

## Art. 165a—4. State Soil Conservation Act—Short Title

Section 1. This Act may be known and cited as the "State Soil Conservation Law."

**Legislative Determination, and Declaration of Policy**

Sec. 2. It is hereby declared, as a matter of Legislative Determination:

(a) The Condition. That the farm and grazing lands of the State of Texas are among the basic assets of the State and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this State by wind and water; that the breaking of natural grass, plant, and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any occupier of land to conserve the soil and control erosion upon such land causes a washing and blowing of soil and water from such lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

(b) The Consequences. That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydro-electric power, municipal water supply, irrigation developments, farming, and grazing.

(c) The Appropriate Corrective Methods. That to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion may be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operation such as the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation, seeding and planting of waste, sloping, abandoned, or eroded

lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, soil stabilization with trees, grasses, legumes, and other thick-growing soil holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) Declaration of Policy. It is hereby declared to be the policy of the Legislature to provide for the conservation of soil and soil resources of this State, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this State, and thus to carry out the mandate expressed in Article XVI, Section 59a, of the Constitution of Texas. It is further declared as a matter of Legislative intent and determination of policy that the agencies created, powers conferred and the activities contemplated in this Act for the conservation of soil and water resources and for the reduction of public damage resulting from failure to conserve such natural resources, shall be supplementary and complementary to the work of various river and other authorities now established in the State and to other State officers, agencies, and districts engaged in closely related projects, and shall not be duplicative thereof nor conflicting therewith.

#### Definitions

Sec. 3. Wherever used or referred to in this Act, unless a different meaning clearly appears from the context:

(1) "District" or "Soil Conservation District" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this Act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "State District" means one of the five (5) districts established as provided in Section 4, Subsection A of this Act.

(3) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this Act.

(4) "Board" or "State Soil Conservation Board" means the agency created in Section 4 of this Act.

(5) "County Soil Conservation Advisory Committee" means the committee elected in each county of the State as provided in Section 4, Subsection B, of this Act.

(6) "Petition" means a petition filed under the provisions of Subsection A of Section 5 of this Act for the creation of a district.

(7) "Nominating Petition" means a petition filed under the provisions of Section 6 of this Act to nominate candidates for the office of Supervisor of Soil Conservation District.

(8) "State" means the State of Texas.

(9) "Agency of this State" includes the Government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the Government of this State.

(10) "United States" or "Agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(11) "Government" or "Governmental" includes the Government of this State, the Government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise of either of them.

(12) "Landowner" or "Owner of Land Lying Outside of Incorporated Cities and Towns" includes any person who holds legal or equitable title of any lands lying within a Soil Conservation District organized under the provisions of this Act and who is a duly qualified voter within such District.

(13) "Board of Adjustment" means the agency appointed in accordance with the provisions of Section 10 of this Act.

(14) "Due Notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs, generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

#### State Soil Conservation Board

Sec. 4. A. There is hereby established to serve as an agency of the State and to perform the functions conferred on it in this Act, The State Soil Conservation Board. The Board will consist of five (5) members. The following shall serve in an advisory capacity to the Board: The President of Agricultural and Mechanical College of Texas, the President of Texas Technological College, the Director of Vocational Agriculture of Texas, the State Commissioner of Agriculture and the State Coordinator of the Soil Conservation Service of the United States Department of Agriculture. The five (5) elective members of the Board shall be selected as follows: The State of Texas is hereby divided into five (5) State Districts for the purpose of selecting five (5) members of the State Soil Conservation Board. These five (5) State Districts shall be composed as follows:

State District No. 1, comprising fifty-one (51) counties: Dallam, Dawson, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Borden, Scurry, Fisher, Foard.

State District No. 2, comprising fifty-one (51) counties: Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Runnels, Coke, Sterling, Glasscock, Midland, Ector, Winkler, Loving, Reeves, Culberson, Hudspeth, El Paso, Jeff Davis, Presidio, Brewster, Pecos, Terrell, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, San Saba, Mason, Llano, Blanco, Gillespie, Crockett, Schleicher, Menard, Sutton, Kimble, Val Verde, Edwards, Real, Kerr, Kendall, Bandera, Uvalde, Medina, Kinney, Maverick.

State District No. 3, comprising fifty (50) counties: Burleson, Lee, Bastrop, Travis, Hays, Comal, Guadalupe, Caldwell, Fayette, Washington, Austin, Colorado, Lavaca, Gonzales, Wilson, Bexar, DeWitt, Jackson, Wharton, Fort Bend, Brazoria, Matagorda, Calhoun, Refugio, Bee, Karnes,

Live Oak, Atascosa, McMullen, LaSalle, Frio, Duval, Dimmit, Webb, Zapata, Jim Hogg, Starr, Brooks, Hidalgo, Cameron, Willacy, Kennedy, Kleberg, Nueces, San Patricio, Aransas, Jim Wells, Zavala, Goliad, Victoria.

State District No. 4, comprising fifty-one (51) counties: Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Upshur, Wood, Rains, Van Zandt, Smith, Gregg, Harrison, Henderson, Cherokee, Rusk, Panola, Shelby, Nacogdoches, Anderson, Freestone, Leon, Robertson, Brazos, Madison, Grimes, Waller, Houston, Walker, Trinity, Angelina, San Augustine, Sabine, Newton, Jasper, Tyler, Polk, San Jacinto, Montgomery, Harris, Liberty, Hardin, Orange, Jefferson, Chambers, Galveston.

State District No. 5, comprising fifty-one (51) counties: Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin, Hunt, Collin, Denton, Wise, Jack, Archer, Taylor, Knox, Haskell, Stephens, Throckmorton, Young, Jones, Shackelford, Palo Pinto, Rockwall, Kaufman, Ellis, Parker, Tarrant, Dallas, Johnson, Hood, Somervell, Erath, Eastland, Callahan, Coleman, Brown, Comanche, Mills, Hamilton, Bosque, Hill, Navarro, Limestone, McLennan, Falls, Milam, Bell, Williamson, Burnet, Lampasas, Coryell.

B. The Commissioners Court of each county within thirty (30) days after this Act becomes effective, shall call a meeting or convention of the landowners in each precinct at a place and time for each precinct to be designated by the Commissioners Court, for the purpose of electing a member of the County Soil Conservation Advisory Committee. A majority of the landowners in such precinct present at such meeting shall be necessary to elect such member of the County Soil Conservation Advisory Committee. Each member so elected shall be a landowner of the precinct from which he is elected and shall be actively engaged in the business of farming or animal husbandry.

The Commissioner of each precinct shall act as Chairman of the meeting in such precinct. If said Commissioner is absent the landowners of such precinct present shall elect an acting Chairman from among their number who shall preside at said meeting.

The name of the members so elected shall be certified to the County Judge who shall, within five (5) days, officially notify the person so elected that he has been elected as a member of such Advisory Committee.

The County Soil Conservation Advisory Committee shall select one of its members as Chairman, who shall have authority to cast an additional vote in case of a tie and shall be charged with the usual and customary duties of a presiding officer. A majority of the members shall constitute a quorum and the concurrence of a majority of such quorum in any matter within their jurisdiction shall be required for final determination.

Vacancies upon the County Soil Conservation Advisory Committee shall be filled for an unexpired term, or for a full term, by the same manner in which the retiring members were respectively selected.

Members of a County Soil Conservation Advisory Committee shall receive no compensation for their services except the delegate to the District Convention who shall receive the amount incurred as necessary expenses and Four Dollars (\$4) per day not to exceed two (2) days to be paid by the State Soil Conservation Board created herein.

The first County Soil Conservation Advisory Committee elected in each county shall be elected to serve as follows:

1. Precincts 1 and 3 in each county shall each elect a Committee member to serve for a period ending the first Tuesday in January, 1940,

or until their successors are elected and have qualified. Biennially thereafter on the first Tuesday in January new members shall be elected as hereinabove provided and shall serve for a term of two (2) years.

2. Precincts 2 and 4 in each county shall each elect a Committee member to serve for a period ending the first Tuesday in January, 1941, or until their successors are elected and have qualified. Biennially thereafter on the first Tuesday in January new members shall be elected as hereinabove provided and shall serve for a term of two (2) years.

C. The County Soil Conservation Advisory Committee in each county shall elect one of its number as a delegate to attend the State District Conservation Convention which shall be held within each State District, at a time and place designated by the Governor of the State of Texas, said date to be not later than forty-five (45) days after the effective date of this Act, and each State District Convention shall elect from among the qualified delegates present, by a majority vote, a member of the State Soil Conservation Board. A majority of all county delegates elected to the State District Convention shall constitute a quorum.

State Districts 1, 3 and 5 shall each elect a Board member to serve on the State Soil Conservation Board for a period ending the first Tuesday in February, 1942, or until their successors are elected and have qualified. Biennially thereafter on the first Tuesday in February, at a place within the District to be designated by the Governor of the State of Texas, new Board members shall be elected as hereinabove provided and shall serve for a term of two (2) years, or until their successors are elected and have qualified.

State Districts 2 and 4 shall each elect a Board member to serve on the State Soil Conservation Board for a period ending the first Tuesday in February, 1941, or until their successors are elected and have qualified. Thereafter on the first Tuesday in February, at a place within the district to be designated by the Governor of the State of Texas, new members shall be elected as hereinabove provided to serve for a term of two (2) years or until their successors are elected and have qualified.

D. The State Soil Conservation Board shall meet to organize at a time and place to be designated by the Governor of Texas, within ten (10) days following the election of such members, and shall thereafter meet from time to time as necessary. Each member of the State Soil Conservation Board shall take the State Constitutional Oath of Office, and said State Soil Conservation Board shall designate one of its elective members to serve as Chairman and may from time to time change such designation.

Vacancies upon such Board shall be filled for an unexpired term or for a full term, by the same manner in which the retiring members were respectively elected. Elective members of the Board may receive compensation for their services on the Board, not to exceed the sum of Ten Dollars (\$10) per diem for each day of actual service rendered, but each member shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of the Board.

E. A majority of the elective members of the State Soil Conservation Board shall constitute a quorum and the concurrence of a majority of the elective members in any matter within their duties shall be required for its determination. The State Board shall keep a complete and accurate record of all its official actions, hold such public hearings at such times and places within the State as may be determined by the Board, and shall promulgate such rules and regulations as may be necessary for the performance of the functions of said Board under the provisions of this Act. The Board shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property,



which bonds shall be executed by some solvent company authorized to transact a surety business in this State.

F. The State Soil Conservation Board may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation, according to the terms and amounts as specified in the general appropriation bills. The Board may call upon the Attorney General of the State for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its Chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall have authority to locate its office at a point to be selected by the Board.

G. In addition to the duties and powers hereinafter conferred upon the State Soil Conservation Board, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the Supervisors of Soil Conservation Districts, organized as provided hereinafter, in the carrying out of any of the powers and programs.

(2) To coordinate the programs of the several Soil Conservation Districts organized hereunder so far as this may be done by advice and consultation.

(3) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(4) To disseminate information throughout the State concerning the activities and programs of the Soil Conservation Districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

H. The State Treasurer shall have the care and custody of all funds and securities of the State Board and shall be liable on his official bond for the lawful care, custody, application and disbursement thereof. Any funds coming into the hands of the Treasurer of this State, as hereinafter provided, shall be by him credited to a special fund to be known as the State Soil Conservation Fund and the moneys hereafter deposited or credited in such fund are hereby appropriated to the use and benefit of the State Soil Conservation Board, as may be by said Board used in compliance with this Act. The Board shall provide and furnish a biennial audit by a State Auditor and Efficiency Expert and a report to the Governor of the State.

#### Creation of Soil Conservation Districts

Sec. 5. A. Any fifty (50) or a majority of the landowners within the limits of that territory proposed to be organized into a district may file a petition with the State Soil Conservation Board asking that a Soil Conservation District be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a Soil Conservation District to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate; provided that no such district shall exceed in total area three thousand (3,000) square miles;

(4) A request that the State Soil Conservation Board duly define the boundaries of such district; that an election be held within the territory so defined on the question of the creation of a Soil Conservation District in such territory; and that the Board determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State Soil Conservation Board may consolidate all or any such petitions.

B. Within thirty (30) days after such a petition has been filed with the State Soil Conservation Board, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this Act, and upon all questions relevant to such inquiries. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the Board shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a Soil Conservation District to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Board shall give due weight and consideration to the topography of the area considered and of the state, the composition of the soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other Soil Conservation Districts already organized or proposed for organization under the provisions of this Act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in Section 2 of this Act. If the Board shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a Soil Conservation District to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the Board has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon Soil Conservation Districts in this Act is administratively practicable and feasible. To assist the Board in the determination of such adminis-

trative practicability and feasibility, it shall be the duty of the Board, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold an election within the proposed district upon the proposition of the creation of the district, and to cause due notice of such election to be given, which notice shall set forth the boundaries of the proposed district. The question shall be submitted by ballots upon which the words, "For creation of a Soil Conservation District of the lands below described and lying in the county (ies) of \_\_\_\_\_ and \_\_\_\_\_," and, "Against creation of a Soil Conservation District of the lands below described and lying in the county (ies) of \_\_\_\_\_ and \_\_\_\_\_," shall appear. All landowners within the boundaries of the territory as determined by the State Soil Conservation Board, shall be eligible to vote in such election. Only such landowners shall be eligible to vote.

D. The Board shall pay all expenses for the issuance of such notices and the conduct of such hearings and elections, and shall supervise the conduct of such hearings and elections. It shall issue appropriate regulations governing the conduct of such hearings and elections, and providing for the registration prior to the date of the election of all eligible voters. All such elections held under the provisions of this Act shall be in conformity with the General Election Laws of this State, except as herein otherwise provided, and except that the ballot shall not be numbered or marked for identification purposes.

E. The Board shall publish the result of such election and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Board shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Board shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the Board shall give due regard to and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of resident landowners eligible to vote in such election who shall have voted, the proportion of the votes cast in such election in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determinations, having due regard to the legislative determinations set forth in Section 2 of this Act, provided, however, that the Board shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least two-thirds of the votes cast in the election upon the proposition of creating of the district shall have been cast in favor of the creation of such district.

F. If the Board shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) Supervisors to act until their successors shall be elected as provided hereinafter. Such appointed Supervisors, together with the three (3) Supervisors elected in accordance with the provisions of Section 6 of this Act shall be the governing board of the district. Such district shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed Supervisors shall present to the Secretary of State an application signed by them, which shall set forth, and such application need contain no detail other than the mere recitals: (1) That a petition for the creation of the district was filed with the State Soil Conservation Board pursuant to the provisions of this Act, and that the proceedings specified in this Act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body corporate and politic under this Act; and that the Board has appointed them as Supervisors; (2) The name and official residence of each of the Supervisors, together with a certified copy of the appointments evidencing their right to office; (3) The term of office of each of the Supervisors; (4) The name which is proposed for the district; and (5) The location of the principal office of the Supervisors of the district. The application shall be subscribed and sworn to by each of the said Supervisors before an officer authorized by laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the Supervisors and knows them to be the officers as affirmed in the application and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State Soil Conservation Board, which shall certify (and such statement need contain no detail other than mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the Board did duly determine that there is need, in the interest of public health, safety, and welfare, for a Soil Conservation District to function in the proposed territory and did define the boundaries thereof; that notice was given and an election held on the question of the creation of such district, and that the result of such election showed a two-thirds majority of the votes cast in such election to be in favor of the creation of the district; that thereafter the Board did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Board.

The Secretary of the State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other Soil Conservation District of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other Soil Conservation District in this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the State Soil Conservation Board, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said Supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the State Soil Conservation Board as aforesaid, but in no event shall they include any area included within the boundaries of another Soil Conservation District organized under the provisions of this Act.

G. After six (6) months shall have expired from the date of entry of a determination by the State Soil Conservation Board that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petition may be filed as aforesaid, and action taken thereon in accordance with the provisions of this Act.

H. Petitions for including additional territory within an existing district may be filed with the State Soil Conservation Board, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The Board shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this Act for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion shall be less than fifty (50), the petition may be filed when signed by a two-thirds majority of landowners of such area, and in such case no election need be held. In election upon petitions for such inclusion, all landowners within the proposed additional area shall be eligible to vote.

I. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this Act upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of filing and contents thereof.

#### **Method of Selection, Qualifications, and Tenure of Soil Conservation District Supervisors**

Sec. 6. Within thirty (30) days after the date of issuance by the Secretary of State of a certificate of organization of a Soil Conservation District, nominating petitions may be filed with the State Soil Conservation Board to nominate candidates for Supervisors for such districts. The Board shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the Board unless it shall be subscribed by ten (10) or more landowners within the boundaries of such district. Such landowners may sign more than one such nominating petition to nominate more than one candidate for Supervisor. The Board shall give due notice of an election to be held for the election of Supervisors for the district.

The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a direction to the voter to indicate the voter's preference for three (3) nominees by running a line through the names of nominees he shall desire to vote against. All landowners within the district shall be eligible to vote in such election. Only such landowners shall be eligible to vote. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected Supervisors for such district. The Board shall pay all the expenses of such election, shall supervise the conduct thereof in conformity with the General Election Laws of this State, except as herein otherwise provided, and except that the ballots shall not be numbered or marked for identification purposes; shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof.

The governing body of the district shall consist of five (5) Supervisors, composed of the three (3) Supervisors elected as provided hereinabove, together with the two (2) Supervisors provided for in Section 5 of this Act by the State Soil Conservation Board to serve for one term only, after which time their successors shall be elected in the same manner as other Supervisors and for regular terms. All five (5) such Supervisors shall be landowners in the district from which they are elected, and shall be actively engaged in the business of farming or animal husbandry.

The Supervisors shall designate a Chairman and may, from time to time, change such designation. The term of office of each Supervisor shall be three (3) years except that the Supervisors who are appointed shall be designated to serve for terms of one and two (2) years, respectively, from the date of their appointment. A Supervisor shall hold office until his successor has been elected and has qualified. Vacancies shall be filled by election for the unexpired term. A majority of the Supervisors shall constitute a quorum and the concurrence of a majority of the Supervisors in any matter within their duties shall be required for its determination. A Supervisor may receive compensation for service not to exceed Four Dollars (\$4.00) for each day he shall be in actual attendance upon the duties of the office within the district, not to exceed twenty (20) days in any one calendar year, and not to exceed Four Dollars (\$4.00) a day and necessary expenses incurred for services other than within the district, except by approval of the State Board.

The Supervisors may employ such officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The Supervisors may call upon the Attorney General of the State for such legal services as they may require. The Supervisors may delegate to their Chairman, to one or more Supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The Supervisors shall furnish to the State Soil Conservation Board, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Act.

The Supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings of all resolutions, regulations, and orders issued or adopted and shall provide for an annual audit by a Certified Public Accountant of the accounts of receipts and disbursements. The State Board may demand and pay the expenses of an audit at any time. Any Supervisor may be removed by the State Soil Conservation Board upon notice and hearing, for neglect of duty or malfeasance in office or change of residence out of district but for no other reason.

The Supervisor may invite the legislative body of any municipality or county located within or near the territory comprised within the district to designate a representative to advise and consult with the Supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

#### **Powers of Districts and Supervisors**

Sec. 7. A Soil Conservation District organized under the provisions of this Act shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the Supervisors thereof, shall have the following powers, in addition to others granted in other Sections of this Act:

(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of Section 2, of this Act, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owners of such lands or the necessary rights or interests in such lands;

(2) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any owner of lands within the district, in the carrying on of erosion control and prevention operations within the district, subject to such conditions as the Supervisors may deem necessary to advance the purposes of this Act;

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this Act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this Act;

(4) To make available, on such terms as it shall prescribe, to landowners within the districts, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such landowners to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(5) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this Act;

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners of lands within the district;

(7) To take over, by purchase, lease, or otherwise, and to administer, any soil conservation, erosion control, or erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this State or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this State or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; to act as agent for the United States, or any of its agencies, or for this State or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(8) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession un-

less terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers, to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Act, to carry into effect its purposes and powers;

(9) As a condition to the extending of any benefits under this Act to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the Supervisors may require contributions in the form of services, materials, or otherwise to any operation conferring such benefits, and may require landowners to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

#### Adoption of Land-Use Regulations

Sec. 8. The Supervisors of any district shall have the authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The Supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The Supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct an election for submission of such regulations to the landowners within the boundaries of the district for their indications of approval or disapproval of such proposed regulations, and until after the Supervisors have considered the result of such election. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for inspection during the period between publication of such notice and the date of the election. The notices of the election shall recite the contents of such ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed Ordinance No. ———, prescribing land-use regulations for conservation of soil and prevention of erosion," and "Against approval of proposed Ordinance No. ———, prescribing land-use regulations for conservation of soil and prevention of erosion," shall appear. The Supervisors shall supervise such election, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All landowners within the district shall be eligible to vote in conformity with the General Election Laws of this State, except as herein otherwise provided, and except that the ballot shall not be numbered or marked for identification purposes. The Supervisors shall not have authority to enact such proposed ordinance into law unless at least nine-tenths of the votes cast in such election shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by nine-tenths of the votes cast in such election shall not be deemed to require the Supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinance adopted pursuant to the provisions of this Section by the Supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all owners of land within such district.

Any owner of land within such district may at any time file a petition with the Supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the Supervisors under the provisions of this Section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to



the provisions of this Section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this Section for adoption of land-use regulations or in accordance with variances authorized in Section 10, of this Act; provided, however, that such suspension or repeal may be affected by a majority vote of the qualified voters voting at such election. Elections on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the Supervisors under the provisions of this Section may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees, and grasses, forestations, and reforestation;

(3) Specifications of cropping programs and tillage practices to be observed;

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(5) Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources, and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in Section 2 of this Act.

The regulations shall be uniform throughout the territory comprised within the district except that the Supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this Section shall be printed and made available to all owners and occupiers of land lying within the district.

#### **Performance of Work under the Regulations by the Supervisors**

Sec. 9. The Supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of Section 8 of this Act are being observed.

Where the Supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of Section 8 hereof are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the Supervisors may present to any Court of competent jurisdiction a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the Supervisors may go

on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the owner of such land. Upon the presentation of such petition, the Court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the Court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the Court, and to prosecute the same to completion with reasonable diligence, the Supervisors may enter upon the lands involved and perform the work or operation or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, from the owner of such lands, provided further that in no case shall the total charge for the work done by said Supervisors or any one under them, and to be charged against said lands, ever exceed for any calendar year, ten per cent (10%) of the rendition of said lands.

The Court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the Court the Supervisors may file a petition with the Court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The Court shall have jurisdiction to enter judgment for the amount of such costs and expenses, together with the costs of suit, including reasonable attorney's fee to be fixed by the Court. Such judgments shall be collected in the same manner as that provided for the collection of assessments in Wind Erosion Conservation Districts created by authority of House Bill No. 978, Acts of the Regular Session of the Forty-fourth Legislature of Texas.

#### Board of Adjustment

Sec. 10. A. Where the Supervisors of any district organized under the provisions of this Act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of Section 9 hereof, they shall further provide by ordinance for the establishment of a Board of Adjustment. Such Board of Adjustment shall consist of three (3) members; each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each such Board of Adjustment shall be appointed by the State Soil Conservation Board, with the advice and approval of the Supervisors of the district for which such Board of Adjustment has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the State Soil Conservation Board and the Supervisors of the District. Vacancies in the Board of Adjustment shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant. Members of the State Soil Conservation Board and the Supervisors of the district shall be ineligible to appointment as mem-

bers of the Board of Adjustment during their tenure of such other office. The members of the Board of Adjustment shall receive compensation for their services at the rate of Three Dollars (\$3) per diem for time spent on the work of the Board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The Supervisors shall pay the necessary administrative and other expenses of operation incurred by the Board of Adjustment upon the certificate of the Chairman of the said Board.

B. The Board of Adjustment shall adopt rules to govern its procedures which rules shall be in accordance with the provisions of this Act and with the provisions of any ordinance adopted pursuant to this Section. The Board shall designate a Chairman from among its members, and may, from time to time, change such designation. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Any two (2) members of the Board of Adjustment shall constitute a quorum. The Chairman, or in his absence such other member of the Board as he may designate to serve as acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the Board of Adjustment and shall be a public record.

C. An owner of land within the district may file a petition with the Board of Adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the Supervisors, and praying the Board of Adjustment to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands owned by the petitioner. Copies of such petition shall be served by the petitioner upon the Chairman of the Supervisors of the district within which his lands are located and upon the Chairman of the State Soil Conservation Board. The Board of Adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The Supervisors of the district and the State Soil Conservation Board shall have the right to appear and be heard at such hearing. Any owner of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the Board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing, the Board shall determine that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the Board of Adjustment shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

**Cooperation Between Districts**

Sec. 11. The Supervisors of any two (2) or more districts organized under the provisions of this Act may cooperate with one another in the exercise of any or all powers conferred in this Act.

**State Agencies to Cooperate**

Sec. 12. Agencies of this State which shall have jurisdiction over, or be charged with the administration of, any State-owned lands, and of any county, or other governmental subdivision of the State, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the Supervisors of such districts in the effectuation of programs and operations undertaken by the Supervisors under the provisions of this Act. The Supervisors of such district shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to Section 8 of this Act shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

**Discontinuance of Districts**

Sec. 13. At any time after five (5) years after the organization of a district under the provisions of this Act, any fifty (50) landowners within the boundaries of such district may file a petition with the State Soil Conservation Board praying that the operations of the district be terminated and the existence of the district discontinued. The Board may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the Board it shall give due notice of the holding of an election, and shall supervise such election, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words, "For terminating the existence of the \_\_\_\_\_ (name of the soil conservation district to be here inserted)," and "Against terminating the existence of the \_\_\_\_\_ (name of the soil conservation district to be here inserted)" shall appear.

All landowners within the boundaries of the district shall be eligible to vote in such election. Only such landowners shall be eligible to vote. Such elections shall be conducted in conformity with the General Election Laws of this State, except as herein otherwise provided, and except that the ballots shall not be numbered or marked for identification purposes, and provided further that the Board determine the number of persons necessary to hold such election, but in no event to be less than three (3).

Providing that the compensation of all election judges and clerks in elections provided for hereunder shall not exceed the sum of Two Dollars (\$2) a day each.

The Board shall publish the result of such election and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Board shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Board shall determine that the continued operation of each district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the Supervisors of the district. In

making such determination the Board shall give due regard and weight to the attitudes of the owners of lands lying within the district, the number of landowners eligible to vote in such election who shall have voted, the proportion of the votes cast in such election in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on erosion control operations within such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in Section 2 of this Act; provided, however, that the Board shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the election shall have been cast in favor of the continuance of such district.

Upon receipt from the State Soil Conservation Board of a certification that the Board has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this Section, the Supervisors shall forthwith proceed to terminate the affairs of the district. The Supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State Treasury. The Supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificate of the State Soil Conservation Board setting forth the determination of the Board that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this Section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the Supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this Section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or Supervisors are parties, shall remain in force and effect for the period provided in such contracts. The State Soil Conservation Board shall be substituted for the district or Supervisors as party to such contracts. The Board shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the Supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of Section 9 of this Act, nor the pendency of any action instituted under the provisions of such Section, and the Board shall succeed to all the rights and obligations of the district or Supervisors as to such liens and actions.

The State Soil Conservation Board shall not entertain petitions for the discontinuance of any district nor conduct elections upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this Act, more often than once in five (5) years.

#### Separability Clause

Sec. 15. If any provisions of this Act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the

Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

#### Inconsistency With Other Acts

Sec. 16. In so far as any of the provisions of this Act are inconsistent with the provisions of any other law, the provisions of this Act shall be controlling, except where otherwise indicated in this Act.

#### Repealing and Affirming Certain Acts

Sec. 17. A. Senate Bill No. 227 passed by the Regular Session of the Forty-fourth Legislature, Page 504, Regular Session,<sup>1</sup> is hereby repealed.

B. This Act shall not in anywise repeal House Bill No. 13, Acts of the Forty-second Legislature, Regular Session,<sup>2</sup> but the same is hereby expressly preserved in accordance with terms thereof.

C. This Act shall not in anywise affect, impair, nor impinge upon the provisions of House Bill No. 978, Acts of the Regular Session of the Forty-fourth Legislature<sup>3</sup> under which Wind Erosion Soil Conservation Districts have been created or may hereafter be created, but the same is expressly preserved in accordance with the terms thereof. The State Soil Conservation Board shall have authority, working with the governing bodies of the Wind Erosion Conservation Districts, to put into operation in said Wind Erosion Conservation Districts such provisions of this Act as are not in conflict with the provisions of House Bill No. 978, Acts of the Regular Session of the Forty-fourth Legislature.

D. This Act shall not in anywise repeal Senate Bill No. 386, Acts of the Forty-fifth Legislature, Regular Session,<sup>4</sup> but the same is hereby expressly preserved in accordance with terms thereof. Acts 1939, 46th Leg., p. 7.

1 Article 165a—1.

2 Article 2372c.

3 Article 165a—2.

4 Title 128, ch. 8, note.

Effective April 20, 1939.

Section 14 of this Act makes an appropriation of \$10,000.00 for the expenses of creating and maintaining the State Conservation Board for the remainder of the fiscal year ending August 31, 1939.

Section 14a makes an appropriation for the support and maintenance of the State Conservation Board for the two-year period ending August 31, 1941.

Section 18 declared an emergency and provided that the act should take effect from and after its passage.

#### Title of Act:

An Act to be known as the "State Soil Conservation Act," reciting the legislative determination and declaration of policy; describing the consequence of soil erosion and the depletion of the fertility of the soil; reciting appropriate corrective methods; defining certain words and phrases used in this Act; establishing the State Soil Conservation Board; establishing five (5) State Districts, by conventions called by the Governor of the State, from which members of the State Soil Conservation Board are to be elected; defining the powers and duties of said members acting through and for said State Soil Conservation Board; providing for precinct conventions for the purpose of the establish-

ing of County Soil Conservation Advisory Committees; defining the duties and compensation of the members thereof; providing for the compensation of members of the State Soil Conservation Board; providing for the method by which vacancies on the State Soil Conservation Board shall be filled; providing for the creation of Soil Conservation Districts within certain limits of total area; providing the manner of selection of the Supervisors of said Soil Conservation Districts; defining the powers, duties, and compensation of said Supervisors acting for and through such Soil Conservation Districts; providing for the removal of Supervisors; providing that vacancies shall be filled by election of Supervisors; providing for a Board of Adjustment of three (3) members and fixing the method of appointment, the term of office, the duties, and compensation of Board of Adjustment members; providing for removal of officers under certain conditions and the filling of vacancies; providing that the State Treasurer shall act as the Treasurer for the State Soil Conservation Board; prescribing the duties of the State Treasurer with reference to funds of the Board; providing for a biennial audit and report to be made to the Governor of the State by the State Soil Conservation Board; providing for an appropriation to be made for the use of the State Board; providing the proper method of enforcement of such programs

and regulations as may be promulgated by the several Districts described herein; providing method by which Soil Conservation Districts may be discontinued; repealing Senate Bill No. 227, Regular Session, Forty-fourth Legislature, Page 504; providing that House Bill No. 13, Acts of the Forty-second Legislature, Regular Session and House Bill No. 978, Regular Session Forty-fourth Legislature, and Senate Bill No. 386, Acts of the Forty-fifth Legisla-

ture, Regular Session, shall be specifically preserved; providing that this Act shall be supplementary and complementary to all present laws, except those specifically repealed by this Act; providing this Act shall not impair nor impinge upon the rights, powers, and functions of certain Districts; providing separability clause; and declaring an emergency. Acts 1939, 46th Leg., p. 7.

**Art. 165a—5. Rent of county machinery to landowners in counties of 290,000–320,000**

The Commissioners' Court in any County having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred twenty thousand (320,000), according to the last United States Census may, by an order duly entered upon the minutes of said court, rent or let, direct to any landowner in said County, any tractor, grader, machinery or equipment belonging to said County, to be used by said landowner exclusively upon land situated in said County, in the construction of terraces, dikes and ditches for the purpose of soil conservation and soil erosion prevention and for the purpose of constructing water tanks and reservoirs; provided that no such tractor, grader, machinery or equipment shall be rented or let at a time when the County is using or in the need of the use of the same, and provided further, that the amount to be paid by the landowner to the County for the use of such tractor, grader, machinery or equipment shall be agreed upon by the Commissioners' Court and the landowner and shall be specified in the order renting or letting the same. Acts 1939, 46th Leg., Spec. L., p. 589, § 1.

Effective May 31, 1939.

Section 2 of this Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the Commissioners' Court of any county having a population of not less than two hundred ninety thousand (290,000), and not more than three hundred twenty thousand (320,000), according

to the last United States Census, to rent or let to any landowner any tractor, grader, machinery or equipment belonging to said County to be used exclusively upon land belonging to such owner situated in said County, in the construction of terraces, dikes and ditches for the purpose of said conservation and soil erosion prevention and for the purpose of constructing water tanks and reservoirs and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 589.

**CHAPTER TEN—MILK PRODUCERS AND DISTRIBUTORS**

Art.

165—3. Milk grading and pasteurization  
[New].

**Art. 165—3. Milk grading and pasteurization; definitions**

Section 1. The following definitions shall apply in the interpretation of this Act:—

(A). Milk. Milk is hereby defined to be the lacteal secretion obtained by the complete milking of one or more healthy cows, excluding that obtained within fifteen days before and five days after calving, or such longer period as may be necessary to render the milk practically colostrum free; which contains not less than eight per cent (8%) of milk solids-not-fat, and not less than three and one-fourth per cent (3¼%) of milk fat.

(B). **Pasteurized Milk or Milk Products.** Pasteurized milk or milk products is milk or milk products every particle of which has been heated to a temperature of not less than 142° F., and held at such temperature for not less than 30 minutes in pasteurization apparatus approved by the State Health Officer, provided that approval shall be limited to apparatus which requires a combined holder and indicating thermometer temperature tolerance of not more than 1½° F., as shown by official tests with suitable testing equipment, and provided that such apparatus shall be operated as directed by the State Health Officer and so that the indicating thermometers and the recording thermometer charts both indicate a temperature of not less than 143½° F., continuously throughout the holding period. The terms "pasteurization", "pasteurized", and similar terms shall also include the process of heating every particle of milk or milk products to 160° F., and holding at that temperature or above for not less than 15 seconds in apparatus designed and operated in accordance with specifications approved by the State Health Officer. Provided that nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated as of at least equal efficiency and is approved by the State health authority.

(C). **Milk Fat or Butter Fat.** Milk fat or butter fat is the fat of milk.

(D). **Cream.** Cream is a portion of milk which contains not less than eighteen per cent (18%) milk fat, and the acidity of which is not more than 0.20% expressed as lactic acid.

(E). **Skimmed Milk.** Skimmed milk is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat percentage to less than three and one-fourth per cent.

(F). **Milk or Skimmed Milk Beverage.** A milk beverage or a skimmed milk beverage is a food compound or confection consisting of milk or skimmed milk as the case may be, to which has been added a syrup or flavor consisting of wholesome ingredients.

(G). **Buttermilk.** Buttermilk is the product which remains when fat is removed from milk or cream in the process of churning. It contains not less than eight per cent (8%) of milk solids-not-fat.

(H). **Cultured Buttermilk.** Cultured buttermilk is the product resulting from the souring or treatment, by a lactic acid culture, of milk or milk products. It contains not less than eight per cent (8%) of milk solids-not-fat, and shall be pasteurized before adding the culture.

(I). **Vitamin D Milk.** Vitamin D milk is milk the vitamin D content of which has been increased by a method and in an amount approved by the health officer.

(J). **Reconstituted or Recombined Milk.** Reconstituted or recombined milk is a product resulting from the recombining of milk constituents with water, and which complies with the standards for milk fat and solids-not-fat of milk as defined herein.

(K). **Milk Producer.** A milk producer is any person who owns or controls one or more cows, a part or all of the milk or milk products from which is sold.

(L). **Milk Distributor.** A milk distributor is any person who offers for sale or sells to another any milk or milk products for human consumption as such.

(M). **Dairy or Dairy Farm.** A dairy or dairy farm is any place or premises where one or more cows are kept, a part or all of the milk or milk products from which is sold.



(N). Milk Plant. A milk plant is any place, or premises, or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, or prepared for distribution.

(O). Milk Products. Milk products shall be taken to mean and include cream, vitamin D milk, buttermilk, cultured buttermilk, skimmed milk, reconstituted or recombined milk, milk beverages, and skimmed milk beverages. Section 4 shall also refer to ice cream, milk powder, condensed milk, butter, cheese, or similar products.

(P). Grades "A", "B", "C", and "D" Raw Milk or Milk Products. Grades "A", "B", "C", and "D" raw milk or milk products are milk or milk products which have been produced and handled in accordance with the specifications and requirements as promulgated by the State Health Officer and which grade and grade label has been determined and awarded by a City or County Health Officer or by his representative.

(Q). Grades "A", "B", and "C" Pasteurized Milk or Milk Products. Grades "A", "B", and "C" pasteurized milk or milk products are milk or milk products which have been produced and pasteurized in accordance with the specifications and requirements as promulgated by the State Health Officer and which grade and grade label has been determined and awarded by a City or County Health Officer or by his representative. Provided, however, that pasteurization of milk shall not constitute any change in the grade thereof and all milk shall be sold after pasteurization as the same grade as classified before pasteurization.

**State Health Officer to fix specifications**

Sec. 2. The State Health Officer is hereby authorized and empowered to define what shall constitute and to fix the specifications for the production of the following grades of raw milk and raw milk products, according to the safety and food value of the same and the sanitary conditions under which the same are produced and handled; to-wit: Grades "A", "B", "C", and "D" raw milk and raw milk products. Provided such specifications defined and fixed by the State Health Officer shall be based upon and in harmony with the specifications for these grades of raw milk and raw milk products as set forth in the current United States Public Health Service Milk Ordinance.

And the State Health Officer is hereby authorized and empowered to define what shall constitute and to fix the specifications for the production and handling of the following grades of pasteurized milk and pasteurized milk products, according to the safety and food value of the same, and the sanitary conditions under which the same are produced or handled; to-wit: grades "A", "B", and "C" pasteurized milk and pasteurized milk products. Provided such specifications defined and fixed by the State Health Officer shall be based upon and in harmony with the specifications for these grades of pasteurized milk and pasteurized milk products as set forth in the current United States Public Health Service Milk Ordinance.

The definitions, specifications and requirements promulgated by the State Health Officer in accordance with the two foregoing paragraphs of this Act shall become effective three months from the date of their promulgation; and the State Health Officer shall furnish printed copies of such grades, specifications, and requirements to County and City Health Officers, at least thirty days before their effective date.

Any city adopting any specifications and regulations for any grade of milk shall be governed by the specifications and regulations promulgated by the State Health Officer, as herein authorized.

**Permits for use of labels in advertising or labeling milk**

Sec. 3. Any person, firm, association or corporation desiring to use any grade "A", "B", "C", or "D" label in representing, publishing or advertising any milk or milk products offered for sale or to be sold within this State, shall make application for a permit to the City Health Officer in any incorporated city where the same is to be sold or offered for sale, for a permit to use any such label in advertising, representing, or labeling such milk or milk products; any person, firm, association or corporation that desires to use any grade "A", "B", "C", or "D" label in representing, publishing or advertising any milk or milk products offered for sale or to be sold outside of the limits of any incorporated city or town shall make application to the County Health Officer in any county where the same is to be sold or offered for sale, for a permit to use any such label in advertising, representing, or labeling such milk or milk products; any person, firm, association or corporation desiring to use any grade "A", "B", "C", or "D" label in representing, publishing or advertising any milk or milk products offered for sale or to be sold both within and without the limits of any incorporated city or town, shall make application to both the City Health Officer and the County Health Officer for a permit to use any such label in advertising, representing, or labeling such milk or milk products.

Any city or county health officer receiving such application as provided for in this section is hereby authorized and empowered to take the necessary steps to determine and award the grade of the milk or milk products offered for sale by such applicant, according to the requirements of this Act for grade labels. He shall report to the State Health Officer the name or names of all applicants to whom he has awarded permission to use grade "A", or grade "B" labels, and shall notify the State Health Officer of all such permits revoked by him; provided, that the State Health Officer may exempt the City Health Officer from making such reports in cities that have adopted milk ordinances which in his judgment make such reports unnecessary.

**Milk to conform to marked grades**

Sec. 4. No milk or milk products sold, produced or offered for sale within this State by any person, firm, association or corporation shall carry a label, device or design marked "grade A", or "grade B", or any other grade, statement, design or device, regarding the safety, sanitary quality or food value of the contents of the container which is misleading or which does not conform to the definitions and requirements of this Act.

No milk or milk products, except those produced or processed by a person, firm, association or corporation having a permit to use a grade "A" label under the provisions of this Act and which are produced, treated and handled in accordance with the specifications and requirements fixed and promulgated by the State Health Officer for grade "A" milk and milk products, shall be represented, published, labeled or advertised as being grade "A" milk or grade "A" milk products.

**Construction as to resale of milk in containers**

Sec. 5. Nothing in this Act shall be construed as requiring any person, firm, association or corporation to obtain a permit in order to resell or offer for sale in the same container any milk or milk products, representing or advertising the same as a grade of milk or milk products purchased from any person, firm, association or corporation having a permit to so represent or advertise such milk or milk products.

**Regulation of grading and labeling by State Health Officer**

Sec. 6. The State Health Officer is hereby authorized and empowered to supervise and regulate the grading and labeling of milk and milk products in conformity with the standards, specifications and requirements which he promulgates for such grades, and in conformity with the definitions of this Act; and he and his representatives shall have the power to revoke and re-grade permits issued by any local health officials, when upon examination he or his representative shall find that such permit for the use of any grade label does not conform to the specifications or requirements promulgated by him in conformity to this Act.

**Enabling clause**

Sec. 7. The governing body of any city in the State of Texas may make mandatory, the grading and labeling of milk and milk products sold or offered for sale under the United States Standard Milk Ordinance within their respective jurisdictions as defined herein according to Definition (P) Section 1 for grades "A", "B", "C", and "D" Raw milk or Milk Products, and Definition (Q) for grades "A", "B", and "C" pasteurized milk or milk products by adopting an ordinance to that effect and by providing the necessary facilities for determining the grades and for the enforcement of this Act. Provided, however, the provisions of this Section shall apply only to milk or milk products, sold or offered for sale by any person, partnership, or corporation directly to the consumer of such milk or milk products.

**Penalty**

Sec. 8. Whoever violates any provision of this Act shall be fined in the sum not less than Twenty-five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars and each separate violation shall constitute a separate offense. Acts 1937, 45th Leg., p. 353, ch. 172.

Effective April 19, 1937.

Section 9 declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act providing for the protection of the public health; defining certain terms used in the Act; authorizing the State Health Officer to define and fix the specifications for certain grades of milk and milk products as defined in the Act; authorizing the State Health Officer and his representatives to supervise and regulate the labeling of milk and milk products; providing for grading of pasteurized milk; enabling cities and counties to require all milk sold within their boundaries to be

graded and labeled; forbidding the use of certain grade labels except under certain conditions and providing penalties and remedies for violation of said provision; providing that specifications for grade of milk shall conform to the current United States Public Health Ordinance; forbidding the use of grade labels or other designs or device misrepresenting the contents of any container of milk or milk products; providing remedies and penalties for the enforcement of this Act; provided that if any portion of the Act be held inoperative or invalid the remainder of the Act shall be unaffected thereby and declaring an emergency. [Acts 1937, 45th Leg., p. 353, ch. 172.]

**CHAPTER ELEVEN—COTTON [NEW]**

**Art.**

165—4. Cotton Research Award Fund—  
 Declaration of policy.

**Art. 165—4. Cotton Research Award Fund—Declaration of policy**

Section 1. By this Act it is expressly declared to be a State policy that the encouragement and stimulation of new uses for cotton shall be a matter of State-wide importance and concern and that the various agencies of the State Government, and more particularly the various State agricultural departments, agencies, schools, colleges, etc., are hereby di-

rected to take full and sufficient notice and consideration of the policy herein established and set forth, and the activities of all agencies of the State Government, and more particularly those especially mentioned above are hereby directed to be revamped and reorganized so as to conform with the provisions of this Act.

Sec. 2. The Governor of this State is hereby directed as the Chief Executive and Administrative Officer of this State to use his efforts to carry out the policy set forth above.

Sec. 3. In order to assist in carrying out the policy set forth in this Act, there is hereby created the "Cotton Research Award Fund", and there is hereby appropriated to this fund out of any money in the State Treasury not otherwise appropriated the sum of Ten Thousand (\$10,000.00) Dollars. The President of the University of Texas, the President of the A. & M. College, and the President of Texas Technological College are hereby designated as a Board of Trustees of said fund. Said Board of Trustees are hereby appointed and empowered to dispense said fund in keeping with rules and regulations which a majority of said Board may adopt, provided that the same are not in conflict with the provisions of this Act. Said rules and regulations shall be drawn up and published within ninety days from the effective date of this Act, and among other things, they shall provide for:

(a) An award of not less than Five Thousand (\$5,000.00) Dollars, nor more than Ten Thousand (\$10,000.00) Dollars to any resident Texas citizen, who, by chemical research or other invention or device, discovers any process or method which hereafter brings about an increase in the consumption of cotton annually in an amount equal to or greater than three hundred thousand (300,000) bales of five hundred (500) pounds net weight;

(b) The persons mentioned above are to be the sole judges as to whether the required increase in consumption of cotton above mentioned has actually taken place, and the Comptroller of Public Accounts is hereby authorized to pay warrants drawn on the "Cotton Research Award Fund" when said warrants are signed by a majority of the three persons above mentioned. Acts 1939, 46th Leg., p. 1.

Effective June 17, 1939.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to declare a State policy regarding the encouragement and stimulation of new uses for cotton; directing that the various State agencies shall take due notice of such policy; directing particular State agencies to do the same; providing that certain agencies of the State Gov-

ernment shall be revamped and reorganized; directing the Governor to carry out the policy established by this Act; creating the Cotton Research Award Fund; making an appropriation therefor; providing for a Board of Trustees for said fund; providing the duties and powers of said Board of Trustees; setting forth certain conditions concerning expenditures from said fund; providing for the Comptroller to pay warrants drawn against said fund; and declaring an emergency. Acts 1939, 46th Leg., p. 1.

## TITLE 7—ANIMALS

### 2. DESTRUCTION OF ANIMALS

- Art.  
 190a—1. Bounties on coyote scalps in McMullen County [New].
- 190f. Destruction of ravens and predatory animals in Callahan and other counties [New].

Art.

190g. Bounties on rattlesnakes and predatory animals in Bell County [New].

### 2. DESTRUCTION OF ANIMALS

#### Art. 190a—1. Bounties on coyote scalps in McMullen county

The Commissioners' Court of McMullen County, in order to preserve game, is hereby authorized to pay out of the general fund, bounties on the scalps of coyotes, in such sum as they deem necessary not to exceed Fifty (\$50.00) Dollars for each scalp. Said Commissioners' Court may require such proof and adopt such rules and regulations as are necessary in order to protect the interest of the County and make assurance that one coyote has been killed for each scalp paid for. Acts 1939, 46th Leg., Spec.L., p. 515, § 1.

Effective April 27, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act authorizing the Commissioners'

Court of McMullen County to pay bounties on coyote scalps in McMullen County to preserve game in said county; enacting the necessary regulations in reference thereto; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 515.

#### Art. 190f. Destruction of ravens and predatory animals in Callahan and other counties

It is hereafter lawful for the Commissioners Courts of Callahan, Eastland, and Taylor Counties to pay out of the General Fund of said Counties bounties for the destruction of ravens, rabbits, rattlesnakes, and other predatory animals within said Counties as hereinafter provided.

The Commissioners Courts may by resolution entered upon its minutes provide for the destruction of such ravens, rabbits, rattlesnakes, and other predatory animals and the amount of bounty to be paid for the destruction of such, and the method of providing such destruction so as to entitle the person destroying same to receive said bounty. The amount paid as bounty for destruction of ravens, rabbits, rattlesnakes, and other predatory animals in said Counties shall be paid by warrant drawn upon the General Fund of the Counties by the Judges of such Counties on the filing with them of such proof as the Commissioners Courts may require. Acts 1937, 45th Leg., p. 500, ch. 251, § 1.

Effective May 1, 1937.

Section 2 of this Act declared an emergency making the act effective on and after its passage.

Title of Act:

An Act granting the Commissioners Courts of Callahan, Eastland, and Taylor

Counties permission to pay out of the General Fund of said Counties bounties for the destruction of rabbits, rattlesnakes, and ravens; and declaring an emergency. [Acts 1937, 45th Leg., p. 500, ch. 251.]

#### Art. 190g. Bounties on rattlesnakes and predatory animals in Bell County

It is hereafter lawful for the Commissioners Court of Bell County to pay out of the General Fund of said County bounties for the de-

struction of rattlesnakes and predatory animals within said County as hereinafter provided.

The Commissioners Court may by resolution entered upon its minutes provide for the destruction of such rattlesnakes and predatory animals and the amount of bounty to be paid for the destruction of such, and the method of providing such destruction so as to entitle the person destroying same to receive said bounty. The amount paid as bounty for destruction of rattlesnakes and predatory animals in said County shall be paid by warrant drawn upon the General Fund of the County by the Judge of such County on the filing with them of such proof as the Commissioners Court may require. [Acts 1937, 45th Leg., 1st C.S., p. 1804, ch. 28, § 1.]

Effective July 7, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act granting the Commissioners

Court of Bell County permission to pay out of the General Fund of said County bounties for the destruction of rattlesnakes and predatory animals; and declaring an emergency. Acts 1937, 45th Leg. 1st C.S., p. 1804, ch. 28.

## TITLE 8—APPORTIONMENT

## Art. 198. 29, 21, 16 Supreme Judicial Districts

This State shall be divided into eleven (11) Supreme Judicial Districts, composed of the following named Counties for the purpose of constituting and organizing a Court of Civil Appeals in each of the several Supreme Judicial Districts as follows, to wit:

First: Trinity, Walker, Grimes, Burleson, Washington, Waller, Harris, Chambers, Austin, Colorado, Lavaca, Jackson, Matagorda, Wharton, Brazoria, Fort Bend, Galveston, Anderson, and Houston.

Second: Wichita, Clay, Montague, Wise, Tarrant, Cooke, Denton, Parker, Archer, Young, Jack, and Hood.

Third: Milam, Lee, Bastrop, Caldwell, Hays, Travis, Williamson, Bell, Burnet, Blanco, Llano, San Saba, Lampasas, Mills, McCulloch, Brown, Coleman, Runnels, Tom Green, Concho, Comal, Fayette, Coke, Sterling, Irion, and Schleicher.

Fourth: Val Verde, Guadalupe, Sutton, Edwards, Kinney, Maverick, Menard, Kimble, Kerr, Bandera, Uvalde, Zavala, Dimmit, Webb, La Salle, Frio, Medina, Duval, McMullen, Atascosa, Bexar, Kendall, Wilson, Live Oak, Zapata, Bee, Karnes, Victoria, Goliad, Hidalgo, Cameron, Starr, Jim Hogg, Real, Brooks, Jim Wells, Kleberg, Kenedy, Willacy, Gillespie, Mason, Gonzales, Calhoun, Refugio, San Patricio, Aransas, Nueces, and DeWitt.

Fifth: Grayson, Collin, Dallas, Rockwall, Henderson, Kaufman, Van Zandt, and Hunt.

Sixth: Fannin, Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Rains, Wood, Upshur, Marion, Harrison, Gregg, Smith, Cherokee, Rusk, Panola, Camp, and Hunt.

Seventh: Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Farmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Foard, Hardeman, Wilbarger, Crosby, Lubbock, Hockley, Cochran, Yoakum, Terry, Lynn, Garza, Dickens, Kent, and King.

Eighth: Crockett, Gaines, Andrews, Martin, Loving, Winkler, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagan, Terrell, Pecos, Brewster, Presidio, Jeff Davis, El Paso, Ector, Culberson, and Hudspeth.

Ninth: Shelby, Nacogdoches, Angelina, San Jacinto, Montgomery, Liberty, Jefferson, Orange, Hardin, Newton, Jasper, Tyler, Polk, Sabine, and San Augustine.

Tenth: McLennan, Freestone, Coryell, Hamilton, Bosque, Navarro, Johnson, Somervell, Falls, Limestone, Hill, Brazos, Leon, Madison, Robertson, and Ellis.

Eleventh: Dawson, Howard, Mitchell, Scurry, Nolan, Fisher, Stonewall, Taylor, Jones, Haskell, Knox, Callahan, Shackelford, Throckmorton, Baylor, Comanche, Eastland, Stephens, Erath, Palo Pinto, and Borden. As amended Acts 1939, 46th Leg., p. 148, § 1.

Effective April 6, 1939.

Section 2 of Acts 1939, 46th Leg., p. 148, applicable to De Witt County, read as follows: "All appeals, writs of error, and other processes and proceedings arising in civil cases from the trial courts of DeWitt County, Texas, beginning with the summer term, A. D. 1939, shall be filed

in the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas at San Antonio."

Section 3 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Art. 199: 30, 22, 17 Judicial Districts****2.—Angelina, Cherokee, and Nacogdoches.**

The Second Judicial District of the State of Texas shall be composed of the Counties of Angelina, Cherokee and Nacogdoches, and from and after the effective date of this Act the terms of the District Court in and for the several counties constituting said Second Judicial District shall be begun and holden therein as follows:

Cherokee County. First term, beginning the first Monday in January and may continue in session five (5) weeks; second term, beginning on the fifteenth Monday after the first Monday in January and may continue in session five (5) weeks; third term, beginning on the thirty-fourth Monday after the first Monday in January and may continue in session five (5) weeks.

Nacogdoches County. First term, beginning on the fifth Monday after the first Monday in January and may continue in session five (5) weeks; second term, beginning on the twentieth Monday after the first Monday in January and may continue in session five (5) weeks; third term, beginning on the thirty-ninth Monday after the first Monday in January and may continue in session five (5) weeks.

Angelina County. First term, beginning on the tenth Monday after the first Monday in January and may continue in session five (5) weeks; second term, beginning on the twenty-ninth Monday after the first Monday in January and may continue in session five (5) weeks; third term, beginning on the forty-fourth Monday after the first Monday in January and may continue in session five (5) weeks. As amended Acts 1939, 46th Leg., p. 150, § 1.

Sec. 2. All processes and writs, both civil and criminal, issued out of the District Court of any county of the Second Judicial District prior to the effective date of this Act and returnable to any term of such Court to convene after December 31, 1939, shall be made returnable to the first term of such Court convening as provided herein; and all processes and writs which shall have been issued prior to the effective date of this Act and which shall have been served prior to its effective date or which may be served subsequent thereto, and returnable to any term of the District Court of any one of the counties of said Judicial District as heretofore fixed by law, are hereby made returnable to the first term of the District Court of each said counties in accordance with the provisions of this Act; and all bonds, both civil and criminal, which have been heretofore executed and recognizances entered into in said Court shall be in all things legal and valid as though no change had been made in the date of convention of the terms of court in said counties, and they shall bind the parties to appear and to fulfill the obligations of such bonds and recognizances at the terms of the District Court of said counties as fixed and prescribed herein; and all grand and petit jurors drawn and selected under existing laws for any of the counties of said district for a term of the District Court thereof to convene after the effective date of this Act are hereby declared lawfully and legally drawn and selected for the first term of the District Court of the respective counties to be held in accordance with the provisions of this Act.

Sec. 3. All pleadings and motions of every character filed in the District Court of any of said counties shall be filed in duplicate, one copy of which shall be marked "original," and the other shall be marked "duplicate," but the clerk shall be entitled to only one filing fee for filing both. The original pleading or motion shall remain at all times in the office of the District Clerk of such county, or in his custody, or in the Court, provided, however, that the Court may, by an order entered up-



on the minutes, allow the original pleading or motion to be withdrawn for a limited time whenever necessary, upon the condition that a certified copy thereof be left on file. The party desiring to withdraw such pleading or motion shall pay the cost of such order and of the certified copy of such pleading or motion. Acts 1939, 46th Leg., p. 150.

Effective Dec. 31, 1939.

Section 4 of the amendatory act of 1939 repeals all conflicting laws and parts of laws.

Section 5 provided that the Act should take effect and be in force from and after the 31st day of December, 1939.

### 3.—Houston, Henderson, and Anderson:

3. The Third Judicial District of the State of Texas shall be composed of the Counties of Anderson, Henderson and Houston, and from and after August 16, 1937, the terms of the District Court within said Counties shall be held therein as follows:

In the County of Anderson on the first Monday in December and may continue in session eight weeks; on the eighteenth Monday after the first Monday in December, and may continue in session eight weeks; and on the thirty-first Monday after the first Monday in December, and may continue in session five weeks;

In the County of Henderson on the eighth Monday after the first Monday in December and may continue in session five weeks; on the twenty-sixth Monday after the first Monday in December, and may continue in session five weeks; and on the thirty-ninth Monday after the first Monday in December and may continue in session five weeks;

In the County of Houston on the thirteenth Monday after the first Monday in December and may continue five weeks; on the thirty-sixth Monday after the first Monday in December, and may continue in session one week; and on the forty-fourth Monday after the first Monday in December, and may continue in session eight weeks. [As amended Acts 1937, 45th Leg., p. 685, ch. 344, § 1.]

Effective Aug. 16, 1939.

Section 2 of the amendatory Act of 1937 reads as follows: "All processes, all writs and bonds, civil and criminal, issued or executed prior or subsequent to the taking effect of this Act and returnable to the terms of said Court as heretofore fixed by law in the several Counties composing the said Third Judicial District, as well as all grand and petit jurors, are hereby made returnable to the terms of said Courts, as said terms are here now fixed by this Act, and in conformity with the change herein made, and all bonds executed and recognizances entered into in said Courts, shall bind the parties for their appearance or to ful-

fill the obligations of such bonds and recognizances at the two terms of said Courts as they are fixed by this Act, and all process of every kind heretofore returned to, as well as all bonds and recognizances heretofore taken or hereafter entered into after this Act takes effect in any of said Courts, in said District, shall be as valid and as binding as if no change had been made in the time of holding said Court."

Section 3 repeals all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the Act should take effect from and after August 16, 1937.

### 4.—Rusk.

#### Special District Court of Rusk County.

Sec. 4. The said Special District Court of Rusk County, Texas, shall be composed of Rusk County, Texas alone, and shall automatically cease to exist on June 15, 1941. As amended Acts 1937, 45th Leg., p. 410, ch. 206, § 1.

Amendment of 1937 effective April 26, 1937.

Section 2 of the amendatory act of 1937

declared an emergency and provided that the act should take effect from and after its passage.

## 5. Bowie, Cass, and Marion.

That the Fifth Judicial District of Texas shall be composed of the Counties of Bowie, Cass, and Marion, and the terms of the District Courts within said Counties shall be as follows:

In Marion County on the first Monday in January of each year and may continue in session four (4) weeks; on the thirty-sixth Monday after the first Monday in January and may continue in session six (6) weeks.

In Cass County beginning on the fourth Monday after the first Monday in January and may continue in session ten (10) weeks; on the twentieth Monday after the first Monday in January and may continue in session ten (10) weeks; on the forty-second Monday after the first Monday in January and may continue in session ten (10) weeks.

In Bowie County on the fourteenth Monday after the first Monday in January and may continue in session six (6) weeks; on the thirtieth Monday after the first Monday in January and may continue in session six (6) weeks.

The Clerk of the District Court in each of said Counties and his successors in office shall be the Clerk of the Fifth District Court in said Counties and shall perform all duties pertaining to the Clerkship of said Court.

The District Court of the Fifth Judicial District in Bowie and Cass Counties shall exercise general jurisdiction over civil and criminal matters as is now or may hereafter be conferred by law. The District Court of the Fifth Judicial District in Marion County shall have jurisdiction over civil matters only; and said Court in Marion County shall have concurrent jurisdiction with the Seventy-sixth District Court in said County as to all causes of action of a civil nature, and all such causes of action not disposed of at the end of the terms, either of the Fifth Judicial District or the Seventy-sixth Judicial District, shall, by operation of law, be transferred from the Court whose term is then expiring to the other Court, and said Courts, and the Judges thereof, in vacation, may transfer from one Court to the other in causes of action of a civil nature when deemed advisable by said Court so to do.

Said Fifth District Court shall also have concurrent jurisdiction in Bowie County with the One Hundred and Second Judicial District Court, and all causes of action of a civil nature pending in either Court in said County shall, at the end of each term of such Court in which the same is pending, be transferred by operation of law to the other Court, except where the next succeeding term of the One Hundred and Second District Court will convene before the next term of the Fifth District Court in said County; and said Courts, and the Judges thereof, either in termtime or vacation, may transfer any civil or criminal cause pending in their respective Courts to the other District Court in said County by an order entered upon the Minutes of their respective Courts.

All process issued, bonds and recognizances made, and all grand and petit jurors drawn before this Act takes effect shall be valid and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed respectively as though issued and served for such terms and Courts returnable to and drawn for the same.

The Judge and all District Officers of the Fifth Judicial District as heretofore constituted shall be the Judge and District Officers of the Fifth Judicial District as constituted and reorganized by this Section during the terms for which they were elected; provided, however, that the District Attorney of the Fifth Judicial District shall not be an official in Marion County, shall have no jurisdiction either civil or criminal in such County, and shall not be voted on by the constituents

of Marion County. As amended Acts 1937, 45th Leg., p. 272, ch. 143, § 1; Acts 1939, 46th Leg., p. 152, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

7.—Upshur, Wood and Smith.

Special District Court of Smith County.

Sec. 17.—The provisions of this Act shall end and terminate June 15, 1945. As amended Acts 1937, 45th Leg., p. 227, ch. 123, § 1; Acts 1939, 46th Leg., p. 155, § 1.

Amendment of 1939 effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory act of 1939

declared an emergency and provided that the act should take effect from and after its passage.

8. Hunt, Hopkins, Delta, and Rains.

Delta County: On the first Monday in January and may continue three weeks; and on the second Monday in June and may continue until the business is disposed of.

Hopkins County: On the fourth Monday in January and may continue five weeks; on the fifteenth Monday after the fourth Monday in January and may continue up to and including the last Saturday preceding the second Monday in June; and on the fourth Monday in August and may continue six weeks.

Provided, however, that in the County of Hopkins the Judge of the District Court shall not impanel the Grand Jury for the term of Court commencing on the fifteenth Monday after the fourth Monday in January unless in his judgment there exists an imperative necessity for a Grand Jury, and further provided that preference shall be given to the trial of civil cases in said term of Court.

Hunt County: On the fifth Monday after the fourth Monday in January and may continue eight weeks; and on the sixth Monday after the fourth Monday in August and may continue eight weeks.

Rains County: On the thirteenth Monday after the fourth Monday in January and may continue two weeks; and on the fourteenth Monday after the fourth Monday in August and may continue until the business is disposed of.

The District Courts of the Eighth and Sixty-second Judicial Districts in Hunt County shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Courts by the Constitution and Laws of the State; and the District Courts of the Eighth and Sixty-second Judicial Districts in the County of Delta shall have concurrent jurisdiction with each other in said County, throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Courts by the Constitution and Laws of the State; provided that the Judge of the Sixty-second Judicial District shall never impanel the Grand Jury in said Court in the Counties of Lamar, Hunt, and Delta, unless in his judgment he thinks it necessary. Either of the Judges of the District Court of Hunt County may, in their discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Hunt, by order or orders entered upon the Minutes of the Court making such transfer; and, where such transfer or transfers are made, the clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of

said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Courts of the County of Delta may, in their discretion, either in termtime or vacation, transfer any case or cases of a civil or criminal nature that may at any time be pending in his Court, to the other District Court in said Delta County, by order or orders entered upon the Minutes of the Court making such transfer; and, when such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said case or cases in the same manner as if such cases were originally filed in said Court. The clerks of the District Courts of Delta and Hunt Counties respectively, as heretofore constituted, and their successors in office, shall be the clerks of both the Eighth and Sixty-second District Courts in said Counties respectively. As amended Acts 1939, 46th Leg., p. 154, § 1.

Section 2 provided that the Act should become effective and be in force upon and after January 1, 1940.

### 9.—Polk, San Jacinto, Montgomery and Waller.

#### Temporary Terms

Acts 1937, 45th Leg., p. 572, ch. 283, provided for temporary terms of the District Court in and for the counties comprising the Ninth Judicial District, from and after its effective date to Dec. 31, 1938.

#### Special Ninth District Court of Montgomery, Polk and San Jacinto and Trinity Counties.

Said Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties shall cease to exist on the 17th day of December, 1938, at which time the provisions of this Act, except those embodied in Section 13 hereof, and the term of office of the Judge of said Court shall expire by limitation of law. [As amended Acts 1937, 45th Leg., p. 570, ch. 281, § 1.]

Amendment of 1937, effective 90 days after May 22, 1937, date of adjournment.

#### Montgomery, Polk and San Jacinto Counties

Section 1. There is hereby created a Court to be held in Montgomery County, Polk County, and San Jacinto County, Texas, to be called the Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties, Texas.

Sec. 2. Said Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties shall have concurrent jurisdiction with the District Court of the Ninth Judicial District of all matters and causes of civil and criminal nature in Montgomery, Polk, and San Jacinto Counties over which, under the Constitution and General Laws of the State of Texas, the District Court of said Ninth Judicial District of Texas has original and appellate jurisdiction.

Sec. 3. The Judge of the Ninth Judicial District of Texas may, in his discretion, either in termtime or in vacation, by order entered upon the minutes of the District Court of Montgomery, Polk, and San Jacinto Counties, transfer any case or cases that may at that time be pending in said District Court of that County to the Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties, created by this Act, and holding session in that County, and said Special Ninth District Court shall have the same power and authority to try and finally dispose of such case or cases so transferred as the Court possessed from which the same were

transferred; and the Judge of said Special Ninth District Court may, in his discretion, either in termtime or in vacation, by order or orders entered upon the minutes of his Court in any of the Counties for which the said Special Ninth District Court is created, transfer any case or cases pending upon his docket to the District Court of the Ninth Judicial District holding sessions in the County, and when said case or cases are transferred, the Court to which the transfer is made shall have the same right and authority to try and finally dispose of same as was originally had by said Special Ninth District Court.

Sec. 4. Any party or person desiring to bring a suit over which the District Court of the Ninth Judicial District has jurisdiction in Montgomery, Polk, and San Jacinto Counties, shall have the right to file the same either in said Court or in the Special Ninth District Court hereby created, subject to the right of the Judges of said Courts to transfer the same as herein provided.

Sec. 5. The Clerk of the District Court of each of the Counties of Montgomery, Polk, and San Jacinto, and his successors in office, shall be the Clerk of the Ninth Judicial District Court in his County, and shall perform all duties pertaining to the clerkship of each of said Courts.

Sec. 6. The Governor of the State of Texas is hereby authorized and empowered to appoint some person having the qualifications provided by law for District Judges, as Judge of said Special Ninth District Court, who shall hold his office for the duration of the time as provided by the Constitution and Laws of the State of Texas. The compensation of the Judge of the Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties hereby created shall be the same as the compensation paid to the Judges of other District Courts, including the expenses as provided for in Article 6820, Revised Civil Statutes of Texas, 1925; and the Comptroller of the State of Texas is hereby authorized to draw his warrant upon the State Treasurer for such payment; and the compensation herein provided for shall be paid in the manner in which other District Judges of the State of Texas are paid.

Sec. 7. There is hereby conferred upon said Special Ninth District Court, and upon the Judge thereof, all of the rights, powers, privileges, and duties that are given by law to the District Courts and District Judges of this State, and all laws of the State of Texas with reference to the District Courts and District Judges shall be deemed equally applicable to said Special Ninth District Court and the Judge thereof, except as herein specially excepted.

Sec. 8. The District Judge of said Special Ninth District Court may in his discretion impanel grand juries and try and dispose of any and all criminal cases that may be filed in said Special Ninth District Court or transferred thereto from the District Court of the Ninth Judicial District.

Sec. 8a. The District Attorney for the Ninth Judicial District of the State of Texas is hereby empowered and will have the authority to appoint one Assistant District Attorney to prosecute criminal cases in the Special Ninth District Court of the State of Texas, and the District Attorney is hereby empowered and will have the authority to dismiss the said Assistant District Attorney for a good and sufficient cause, and said Assistant District Attorney during the time of his services shall be paid a salary of Two Thousand, Seven Hundred and Fifty Dollars (\$2,750) per year and be payable out of the General Revenue of the State of Texas by warrants issued upon same.

Sec. 9. The terms of said Special Ninth District Court created by this Act in Montgomery, Polk, and San Jacinto Counties, Texas, shall be as follows:

In the County of Polk, on the 18th Monday after the 1st Monday in January of each Year and may remain in session five weeks, and on the 20th Monday after the 1st Monday in July of each year and may remain in session five weeks;

In the County of San Jacinto, on the 16th Monday after the 1st Monday in January of each year, and may remain in session two weeks; and on the 18th Monday after the 1st Monday of July of each year, and may remain in session two weeks;

In the County of Montgomery, on the 1st Monday in January of each year, the 8th Monday after the 1st Monday in January of each year, the 3rd Monday in July of each year, and the 10th Monday after the 1st Monday in July of each year, and may remain in session eight weeks for each term thereof.

Sec. 10. The District Clerks of Montgomery, Polk, and San Jacinto Counties shall, immediately upon the taking effect of this Act, secure a seal having engraved a star of five (5) points in the center and the words "Special Ninth District Court of Montgomery County, Texas," and the imprints of which shall be attached to all process except subpoenas out of said Special Ninth District Court and shall be kept by said Clerk and used to authenticate his official acts as Clerk of said Court.

Sec. 11. Said Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties created by this Act shall cease to exist the 30th day of June, 1943, at which time the term of office of the Judge of said Court shall expire by limitation of law and the provisions of this Act, except those as embodied in Section 12 herein.

Sec. 12. At the expiration of the term for which said Special Ninth District Court is created, the Judge thereof shall deliver all the dockets and records of said Court to the Clerks of the District Courts of Montgomery, Polk, and San Jacinto Counties for preservation, and any case or cases pending upon the dockets of said Special Ninth District Court at the time shall be by said Clerks transferred to the docket of the District Court of the Ninth Judicial District of the County in which said causes are pending. The Judge of said Special Ninth District Court shall also have authority and power, after the expiration of his term of office, to approve any and all statements of facts, bills of exception, or make any other order necessary in cases tried in said Special Ninth District Court and appealed.

Sec. 13. Nothing in this Act shall be construed as in any way affecting the process, terms, jurisdiction, or authority of the District Court of the Ninth Judicial District of Texas, except as herein specially provided and specially conferred upon said Special Ninth District Court hereby created, and all process issued in any case pending in the District Court of the Ninth Judicial District shall be equally valid in any case or cases transferred to said Special Ninth District Court.

Sec. 14. The Judge of said Special Ninth District Court may, in his discretion, from time to time, order drawn and convened a grand jury in the Counties of Montgomery, Polk, and San Jacinto as he may deem proper and necessary.

Sec. 15. The Ninth Judicial District of the State of Texas composed of the Counties of Polk, San Jacinto, Waller, and Montgomery, from and after the effective date of this Act, the terms of the District Court in and for the several counties constituting said Ninth Judicial District shall be begun and holden therein as follows:

In the County of Polk, on the first Monday in January of each year and may remain in session four weeks, and on the 3rd Monday in July of each year and may remain in session four weeks;

In the County of San Jacinto, on the 7th Monday after the 1st Monday in January of each year and may remain in session three weeks, and on the 9th Monday after the 1st Monday in July of each year and may remain in session three weeks;

In the County of Waller, on the 10th Monday after the 1st Monday in January of each year and may remain in session six weeks, and on the 12th Monday after the 1st Monday in July of each year and may remain in session six weeks;

In the County of Montgomery, on the 16th Monday after the 1st Monday in January of each year and may remain in session eight weeks, and on the 18th Monday after the 1st Monday of July of each year and may remain in session eight weeks.

Sec. 16. That all processes and writs issued out of the District Courts of said respective Counties and returnable to the terms of Court in said Counties as fixed at the time of the issuance of same are hereby made returnable to the terms of the District Courts of said respective Counties as said terms are fixed by this Act, and all bonds executed and recognizances entered into in said Courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said Courts as they are fixed by this Act, and all processes heretofore returned or hereafter returned as well as all bonds and recognizances heretofore taken or hereafter taken in the District Courts of said respective Counties shall be as valid as though no change had been made in the time of holding Courts therein, and all grand and petit jurors drawn and selected under existing laws for any of the Counties of said District are hereby declared lawfully drawn and selected for the first term of the District Courts of such respective Counties held in conformity with this Act.

Sec. 17. Should any District Court of the Ninth Judicial District be in session in any of the Counties of said District, under existing laws, when this Act takes effect, such Court shall continue and end its term under such existing laws as if no change in the time of holding Courts in said District had been made, and all processes, writs, judgments, decrees, and other proceedings in said Court, during such time, shall be valid to all intents and purposes and shall not be affected by the changes in the times of holding Court therein made by this Act, but after the period provided in the above contingency, the District Courts of the respective Counties herein mentioned shall be held in conformity with the terms as herein prescribed.

Sec. 18. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. This Act shall take effect and be operative on and after the passage of this Bill, and shall continue in force except as otherwise herein provided.

Sec. 19. If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect. Acts 1939, 46th Leg., p. 157.

Effective Jan. 17, 1939.

Section 20 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

#### Trinity County

Section 1. From and after the passage of this Act, the Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties, Texas, shall also include Trinity County, Texas, and the name of such District

Court shall hereafter be the Special Ninth District Court of Montgomery, Polk, San Jacinto and Trinity Counties and the terms of such District Court in each of said counties shall be held therein each year, as follows:

In the COUNTY OF POLK, on the 18th Monday after the 1st Monday in January of each year and may remain in session 5 weeks, and on the 20th Monday after the 1st Monday in July of each year and may remain in session 5 weeks.

In the COUNTY OF SAN JACINTO, on the 16th Monday after the 1st Monday in January of each year, and may remain in session 2 weeks; and on the 18th Monday after the 1st Monday in July of each year, and may remain in session 2 weeks.

In the COUNTY OF MONTGOMERY, on the 3rd Monday in January of each year and may remain in session 6 weeks; on the 8th Monday after the 1st Monday in January of each year and may remain in session 8 weeks; on the 3rd Monday in July of each year, and may remain in session 8 weeks; and on the 10th Monday after the 1st Monday in July of each year and may remain in session 8 weeks.

In the COUNTY OF TRINITY, on the 1st Monday in January of each year, and may remain in session 2 weeks, and on the 23rd Monday after the 1st Monday in January of each year and may remain in session 2 weeks.

Sec. 2. The Judge of the Special Ninth District Court as the same is now constituted, shall, after the passage of this Act, continue to hold the office of District Judge in such Special Ninth District Court, until the time his successor is duly elected and qualified.

Sec. 3. The Clerk of the District Court of each of the Counties of Montgomery, Polk, San Jacinto and Trinity, and his successor in office, shall be the Clerk of said Special Ninth District Court from and after the passage of this Act, in his respective County.

Sec. 4. In Trinity County, said Special Ninth District Court of Montgomery, Polk, San Jacinto and Trinity Counties, shall not have or exercise any criminal jurisdiction, but in all other respects it shall have concurrent jurisdiction with the District Court of the Twelfth Judicial District, of all matters and causes of a civil nature over which, under the Constitution and General Laws of the State of Texas, the District Court of said Twelfth Judicial District of Texas has original and appellate jurisdiction.

Sec. 5. The Judge of the Twelfth Judicial District of Texas, may in his discretion, either in term time or in vacation, by order entered upon the civil minutes of the District Court of Trinity County, transfer any civil case or cases that may at that time be pending in the said District Court of that County to the Special Ninth District Court of Montgomery, Polk, San Jacinto and Trinity Counties, re-organized by this Act, and holding session in that County, and said Special Ninth District Court shall have the same power and authority to try and finally dispose of such case or cases so transferred as the Court possessed from which the same were transferred; and the Judge of said Special Ninth District Court may, in his discretion, either in term time or in vacation, by order or orders entered upon the minutes of his Court, in Trinity County, transfer any civil case or cases pending upon his docket to the District Court of the Twelfth Judicial District holding sessions in Trinity County, and when said case or cases are transferred, the Court to which the transfer is made shall have the same right and authority to try and finally dispose of same as was originally had by said Special Ninth District Court.

Sec. 6. Any party or person desiring to bring a civil suit over which the District Court of the Twelfth Judicial District has jurisdiction in



Trinity County, shall have the right to file the same either in said Court or in the Special Ninth District Court, hereby re-organized, subject to the right of the Judge of said Courts to transfer the same as herein provided.

Sec. 7. There is hereby conferred upon said Special Ninth District Court, and upon the Judge thereof, all of the rights, powers, privileges and duties that are given by law to the District Courts and District Judges of this State, and all laws of the State of Texas with reference to the District Courts and District Judges, shall be deemed equally applicable to said Special Ninth District Court and the Judge thereof, except as herein specially excepted.

Sec. 8. The District Clerk of Trinity County shall, immediately upon taking effect of this Act, secure a seal having engraved thereon a star of five points in the center and the words "Special Ninth District Court of Trinity County, Texas," and the imprints of which shall be attached to all processes except subpoenas out of said Special Ninth District Court in said County, and shall be kept by said Clerk and used to authenticate his official acts as Clerk of said Court.

Sec. 9. Said Special Ninth District Court of Montgomery, Polk, San Jacinto and Trinity Counties, re-organized by this Act, shall cease to exist the 30th day of June, 1943, at which time the term of office of Judge of said Court shall expire by limitation of law and the provisions of this Act, except those as embodied in Section 10 herein.

Sec. 10. At the expiration of the term for which said Special Ninth District Court is created, the Judge thereof shall deliver all of the dockets and records of said Court to the Clerks of the District Courts of the respective Counties, for preservation, and any case or cases pending upon the dockets of said Special Ninth District Court at the time shall be by said Clerks transferred to the Docket of the Regular District Court of the County in which said causes are pending, the Judge of said Special Ninth District Court shall also have authority and power, after the expiration of his term of office, to approve any and all statements of facts, bills of exception or make any other order necessary in cases tried in said Special Ninth District Court and appealed.

Sec. 11. Nothing in this Act shall be construed as in any way affecting the processes, terms, jurisdiction or authority of the District Court of the Ninth Judicial District of Texas or of the District Court of the Twelfth Judicial District of Texas, except as herein specially provided and specially conferred upon said Special Ninth District Court hereby created, and all processes issued in any case pending in the District Court of the Ninth Judicial District or in the District Court of the Twelfth Judicial District shall be equally valid in any case or cases transferred to said Special Ninth Judicial District.

Sec. 12. That all processes issued or served before this Act takes effect, including recognizances and bonds returnable to the District Court of said Special Ninth District Court, shall be considered as returnable to said Court in accordance with the terms as prescribed in this Act, and all such process is hereby legalized and all grand and petit juries as drawn and selected under the existing laws in any of the Counties of said District, shall be considered lawfully drawn and selected for the next term of District Court of their respective Counties, after this Act takes effect, and all such processes are hereby legalized and validated, provided, if any Court in any County in the several Districts shall be in session when this Act takes effect, such Court or Courts, affected hereby, shall continue in session until the term thereof has ex-

pired under provisions of the existing law, but thereafter the Court in such County or Counties, shall conform to the requirements of this Act.

Sec. 13. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. This Act shall take effect and be operative on and after the passage of this bill, and shall continue in force except as otherwise provided.

Sec. 14. If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect. Acts 1939, 46th Leg., p. 162.

Effective March 24, 1939.

Section 15 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

11, 55, 61, 80, 113, 127.—Harris.

Harris County shall constitute the 11th, 55th, 61st, 80th, 113th, and 127th Judicial Districts. None of said six District Courts shall have or exercise any criminal jurisdiction in Harris County. Said District Courts of the 11th, 55th, 61st, 80th, 113th, and 127th Judicial Districts shall have and exercise concurrent jurisdiction, coextensive within the limits of Harris County, in all civil cases, proceedings, and matters over which District Courts are given jurisdiction by the Constitution and laws of this State.

There shall be two terms of each of said six Civil District Courts in Harris County in each year, and the first term shall be known as the January-June Term, shall begin on the first Monday in January, and shall continue until and including Sunday next before the first Monday in July; and the second term, which shall be known as the July-December Term, shall begin on the first Monday in July and shall continue until and including Sunday next before the first Monday in the following January.

In all suits, actions, or proceedings in said Court, it shall be sufficient for the address or designation to be merely "District Court of Harris County." The Clerk of the Civil District Courts in Harris County shall be known as the "Clerk of the District Court of Harris County, Texas." The Clerk of said six Civil District Courts shall docket alternately on the dockets of the six District Courts of the 11th, 55th, 61st, 80th, 113th, and 127th Judicial Districts in Harris County all cases, actions, petitions, applications, and other proceedings filed in the District Courts of Harris County so that the first case or proceeding filed after the effective date of this Act and every sixth case or proceeding thereafter filed shall be docketed in the 11th Judicial District Court, and the second case or proceeding filed and every sixth case or proceeding thereafter filed shall be docketed in the 55th Judicial District Court, and the third case or proceeding filed and every sixth case or proceeding thereafter filed shall be docketed in the 61st Judicial District Court, and the fourth case or proceeding filed and every sixth case or proceeding thereafter filed shall be docketed in the 80th Judicial District Court, and the fifth case or proceeding filed and every sixth case or proceeding thereafter filed shall be docketed in the 113th Judicial District Court, and the sixth case or proceeding and every sixth case or proceeding thereafter filed shall be docketed in the 127th Judicial District Court, and so on seriatim, and all cases or proceedings in this manner shall be docketed in and divided and distributed among said six Civil District Courts, one-sixth to each of them when first filed. All suits shall be filed by the Clerk in the order in which the petitions are presented to or deposited with him,

and immediately after being so presented or deposited. In case of the disqualification of the Judge of any of said six Civil Courts in any case or proceeding, such case or proceeding, on his suggestion of disqualification, shall be transferred to another of said Courts, and the order of transfer may be made by any Judge of another of said Courts and may be transferred to any other of said Courts, or instead of transferring the case the Judge of any other of said Courts may sit in the Court in which the case is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the Clerk accordingly. The Judges of said six Civil Courts shall sign the minutes of each term of the Courts in Harris County within thirty (30) days after the end of the term, and shall also sign the minutes at the end of each volume of the minutes, and each Judge sitting in said Courts shall sign the minutes of such proceedings as were had before him.

Each Judge of said Courts may take a vacation and not attend court for six weeks between the first day of July and the first day of October in each year, during which time the term of court of which he is Judge shall remain open and the Judge of any other Civil District Court in Harris County may hold such Court during the vacation of the Judges thereof. During the period of such vacation it shall not be lawful for a Special Judge of such Court to be elected by the practicing lawyers of such Court because of the absence of the Judge on his vacation, unless no Judge of said Civil District Court is in the County. The Judges of said Courts shall, by agreement among themselves, take their vacations alternately so that there shall at all times be at least two of said Judges in the County; and in the event of the absence, sickness or disqualification of the Judge of any of said Civil District Courts any of the other Judges of the said District Courts may act and preside or any regular practicing lawyers of the bar of Harris County, Texas, may be elected who have the qualifications of a District Judge to act and preside over any of the said Courts during such absence, sickness or inability of any of the Regular Judges to act and preside therein; such Special Judge shall be elected according to Title 40 of the Revised Civil Statutes of the State of Texas of 1925.<sup>1</sup> As amended Acts 1939, 46th Leg., p. 184, § 3.

<sup>1</sup> Articles 1884-1926.

An additional District Court is hereby created in and for Harris County, Texas, the limits of which district shall be coextensive with the limits of Harris County. Said Court shall be known as the 127th District Court. Acts 1939, 46th Leg., p. 184, § 1.

Immediately upon the passage of this law, the Governor shall appoint a suitable person as Judge of the 127th District Court. He shall hold office as Judge until the next general election and until his successor shall be duly elected and qualified. Thereafter, such Judge shall be elected as provided by the Constitution and the laws of the State for the election of District Judges. Acts 1939, 46th Leg., p. 184, § 2.

The letters A, B, C, D, E, and F shall be placed on the docket and the court papers in the respective District Courts of Harris County to distinguish them, A being used in connection with the 11th District Court; B, the 55th District Court; C, the 61st District Court; D, the 80th District Court; E, the 113th District Court; and F, the 127th District Court. Acts 1939, 46th Leg., p. 184, § 4.

The Clerk of the District Court of Harris County, upon the taking effect of this Act, shall prepare promptly dockets for the Court so created by this Act and shall place on the docket of said 127th District Court every sixth case pending on the respective dockets of the 11th, 55th, 61st,

80th, and 113th District Courts, and shall continue in this manner through said dockets until all said cases thereon are exhausted and the dockets of said six courts are equalized as near as may be. No case then on trial in any of the existing District Courts, nor any case pending or appeal therefrom, shall be transferred to the docket of the 127th District Court. The cases so transferred shall bear the same docket numbers as in the Court from which they are transferred and the Judges of the existing District Courts, respectively, shall make proper orders transferring from such Courts to the 127th District Court the cases which have been placed on the docket of the 127th District Court in pursuance of this Act. Acts 1939, 46th Leg., p. 184, § 5.

The respective Judges of the District Courts of Harris County shall, from time to time as occasion may require, transfer cases from any one of such Courts to any other such Court in order that the business may be equally distributed among them, that the Judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the Judge in whose Court it is pending; provided, however, that no case shall be transferred from one Court to another without the consent of the Judge of the Court to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the Court as evidence thereof and such order on the minutes shall be notice of the transfer to the attorneys of record of all parties to the cause. Acts 1939, 46th Leg., p. 184, § 6.

Effective March 30, 1939.

Section 7 of the amendatory Act of 1939 made an appropriation for the salary of the Judge of 127th Judicial District Court until Sept. 1, 1939.

Section 8 read as follows: "All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only. As to all other laws and parts of laws, this Act shall be cumulative."

Section 9 declared an emergency and provided that the Act should take effect from and after its passage.

Acts 1925, 39th Leg., p. 379, ch. 166, §§ 3-8 creating the 80th Judicial District Court composed of Harris county should be omitted here. It is now set out under 80th Judicial District, post.

Acts 1930, 41st Leg., 5th C.S., p. 131, ch. 14, creating an additional District Court for Harris county, to be known as One Hundred and Thirteenth District Court, should be omitted here. See note under 113th Judicial District, post.

## 12.—Walker, Grimes, Trinity, Leon and Madison.

Sec. 11. In the 12th Judicial District of the State of Texas, composed of the counties of Grimes, Trinity, Walker, Madison and Leon, from and after the effective date of this Act, the terms of the District Court in and for the several counties constituting said 12th Judicial District shall be begun and holden therein as follows:

In Grimes County on the 1st Monday in January of each year and may remain in session 5 weeks, and on the 23rd Monday after the 1st Monday in January of each year and may remain in session 5 weeks.

In the County of Walker on the 5th Monday after the 1st Monday of January of each year, and may remain in session 4 weeks, and on the 19th Monday after the 1st Monday in January of each year, and may remain in session 4 weeks, and on the 6th Monday after the 1st Monday in September of each year, and may remain in session 4 weeks.

In the County of Leon, on the 9th Monday after the 1st Monday in January of each year and may remain in session 3 weeks, and on the 1st Monday in September of each year and may remain in session 3 weeks.

In Trinity County, on the 12th Monday after the 1st Monday in January of each year and may remain in session 3 weeks, and on the 3rd Mon-

day after the 1st Monday in September of each year, and may remain in session 3 weeks.

In Madison County, on the 15th Monday after the 1st Monday in January of each year, and may remain in session 4 weeks, and on the 10th Monday after the 1st Monday of September of each year and may remain in session 4 weeks.

Sec. 12. That all processes and writs issued out of the respective Courts of such counties and returnable to the terms of Court in said counties as fixed at the time of the issuance of same are hereby made returnable to the terms of the District Courts of said respective counties as said terms are fixed by this Act and all bonds executed and recognizances entered into in said Courts, shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said Courts as they are fixed by this Act, and all processes heretofore returned or hereafter returned, as well as all bonds and recognizances heretofore taken, or hereafter taken in the District Courts of said respective counties, shall be as valid as though no change had been made in the time of holding Courts therein, and all grand and petit juries drawn and selected under the existing laws for any of the counties of said District, are hereby declared legally drawn and selected for the first term of the District Court of such respective counties held in conformity with this Act.

Sec. 13. Should any District Court of the 12th Judicial District be in session in any of the counties of said District, under the existing laws, when this Act takes effect, such Court shall continue and end its term under the existing laws as if no change in the time of holding Court in said District had been made, and all processes, writs and other proceedings in said Court, during such time, shall be valid to all intents and purposes and shall not be affected by the changes in time of holding Court therein made by this Act, but after the period provided in the above contingency the District Courts of the respective counties herein mentioned shall be held in conformity with the terms as herein prescribed. Acts 1939, 46th Leg., p. 176.

Effective April 24, 1939.

Sections 1-10 of Acts 1939, 46th Leg., p. 176, relate to the 87th Judicial District

and are set out under 87th Judicial District, post.

For sections 14-16 of the Act of 1939, see 87th Judicial District, post.

### 19, 54, 74.—McLennan.

Section 1. The District Courts of the Nineteenth, Fifty-fourth, and Seventy-fourth Districts shall have concurrent jurisdiction throughout the limits of McLennan County in all civil and criminal cases and proceedings of which District Courts are given jurisdiction by the Constitution and laws of the State.

Sec. 2. The Judges of the Nineteenth and Seventy-fourth Judicial Districts shall never impanel a grand jury in their Courts, but either of them may at any time, when in his judgment a necessity exists therefor, convene the grand jury impaneled by the Judge of the Fifty-fourth District Court.

Sec. 3. The Judges of said Courts may exchange districts whenever they deem it expedient, and a Judge of either of said Courts may sit in any one of said three Courts, either upon the request of the regular Judge thereof or in case of his absence or inability to act.

Sec. 4. Any one of the Judges of said Courts may in his discretion, either in termtime or vacation, transfer any cause or causes, civil or criminal, that may at any time be pending in either of said Courts over

which he may be presiding, to any other of said Courts by order or orders entered upon the minutes of his said Court, and where such transfer is made, the Clerk of said Courts shall enter such cause upon the docket of the Court to which such transfer is made, and when so entered upon the docket, the Judge of said Court to which such cause has been transferred, shall try and dispose of said cause in the same manner as if such cause had been filed in said Court.

Sec. 5. All pleadings of any character filed in either of said Courts shall be filed in duplicate, one copy of which shall be marked "original" and the other, "duplicate." The copy marked "original" shall remain at all times in the Clerk's office, or in his custody, or in the Court, except that the Court may, by order entered upon the minutes, allow said original copy to be withdrawn for a limited time whenever necessary upon a certified copy thereof being left on file. The party withdrawing such pleading shall pay the costs of such order and of the certified copy of said pleading.

Sec. 6. Where a case in either of said Courts has been tried and a verdict rendered therein as much as one week prior to the beginning of the last week of the term of such Court, no motion or amended motion for new trial shall be filed therein later than Monday of the last week of said term, except upon special order of said Court granted upon sworn motion showing good cause therefor.

Sec. 7. The terms of said District Courts shall be held therein each year as follows:

The terms of the Nineteenth District Court shall begin on the second Mondays in January, March, May, July, September, and November of each year, and each of said terms may continue until and including the Saturday next preceding the date for the beginning of the next succeeding term unless the business of the term shall be sooner disposed of.

The terms of the Fifty-fourth District Court shall begin on the first Mondays in January, March, May, July, September, and November of each year, and each of said terms may continue until and including the Saturday next preceding the date for the beginning of the next succeeding term unless the business of the term shall be sooner disposed of.

The terms of the Seventy-fourth District Court shall begin on the second Mondays in February, April, June, August, October, and December of each year, and each of said terms may continue until and including the Saturday next preceding the date for the beginning of the next succeeding term unless the business of the term shall be sooner disposed of.

Sec. 8. If either of said Courts be in session at the time this Act takes effect, the term of said Court then in progress shall continue until and terminate on the Saturday next preceding the date for the beginning of the next term of said Court as provided for herein.

Sec. 9. If any part of this law shall be declared unconstitutional, it is hereby declared to be the intent of the Legislature to pass all Constitutional portions thereof notwithstanding. Acts 1937, 45th Leg., p. 769, ch. 371.

Effective 90 days after May 22, 1937, date of adjournment.

The Act of 1937, cited to the text, seems to provide a substitute for Acts 1893, p. 52, Acts 1915, p. 3, and Acts 1917, p. 13,

defining the jurisdiction of the Nineteenth, Fifty-fourth and Seventy-fourth District Courts, and providing for the terms thereof.

## 22.—Comal, Hays, Caldwell, Fayette and Austin.

The 22nd Judicial District shall be composed of Counties of Comal, Hays, Caldwell, Fayette and Austin, and the terms of the District Court therein shall be held therein as follows:

- In Austin County, first Monday in January and July;
- In Hays County, first Monday in March and September;
- In Caldwell County, first Monday in April and October;
- In Fayette County, first Monday in May and November;
- In Comal County, first Monday in June and December;

and each term to continue twenty-six weeks, provided that the July-August 1937 Term for Caldwell County shall not be abolished until its termination in August 1937. As amended Acts 1937, 45th Leg., p. 790, ch. 386.

Amendment of 1937 effective May 21, 1937.

Section 2 of Acts 1937, 45th Leg., p. 790, ch. 386, read as follows:

"Sec. 2. That all process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said Court in each of said Counties comprising the said Judicial District and all process heretofore returnable as well as all bonds and recognizances heretofore entered into in any of said Courts in said Judicial District shall be valid and binding.

"All process issued or served, before this Act goes into effect to the District Courts of any of said Counties, shall be considered as returnable to said Court in accordance with the terms prescribed by this Act and

all such process is hereby legalized, and all grand and petit jurors drawn and selected under existing laws in any of said Counties in said Judicial District for a term of Court after the date of this Act becomes effective shall be considered lawfully drawn and selected for the next term of the District Court for these respective Counties, held in accordance with this Act; provided, however, that if there should be a term of Court being held at the time said Act goes into effect said term of Court shall remain and continue in session until said term has ended and terminated under the law as it now exists for holding terms of Court in said Judicial District."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## 23.—Brazoria, Fort Bend, Wharton and Matagorda.

The 23rd Judicial District shall be composed of the counties of Brazoria, Fort Bend, Wharton and Matagorda, and the terms of the District Court therein shall be held therein as follows:

In the county of Brazoria beginning on the first Monday in September of each year, and may continue in session for five weeks.

In the county of Fort Bend, beginning on the fifth Monday after the first Monday in September of each year and may continue in session for five weeks.

In the county of Wharton beginning on the tenth Monday after the first Monday in September of each year, and may continue in session five weeks.

In the county of Matagorda beginning on the seventeenth Monday after the first Monday in September of each year, and may continue in session five weeks.

In the county of Brazoria beginning on the first Monday in February of each year, and may continue in session for six weeks.

In the county of Fort Bend beginning on the sixth Monday after the first Monday in February, and may continue in session six weeks.

In the county of Wharton beginning on the twelfth Monday after the first Monday in February of each year, and may continue in session for six weeks.

In the county of Matagorda beginning on the eighteenth Monday after the first Monday in February, and may continue in session for six weeks. As amended Acts 1939, 46th Leg., p. 166, § 1.

Sec. 2. That all process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said

Court in each of said counties comprising the said Judicial District and all process heretofore returnable as well as all bonds and recognizances heretofore entered into in any of said Courts in said Judicial District shall be valid and binding.

Sec. 3. All process issued or served, before this Act goes into effect to the District Courts of any of said counties, shall be considered as returnable to said Courts in accordance with the terms prescribed by this Act and all such process is hereby legalized, and all grand and petit jurors drawn and selected under existing laws in any of said counties in said Judicial District for a term of Court after the date this Act becomes effective shall be considered lawfully drawn and selected for the next term of the District Court for these respective counties, held in accordance with this Act; provided, however, that if there should be a term of Court being held at the time said Act goes into effect said term of Court shall remain and continue in session until said term has ended and terminated under the law as it now exists for holding terms of Court in said Judicial District. Acts 1939, 46th Leg., p. 166.

Section 4 of the amendatory Act provided that the Act should take effect on January 1, 1940.

#### 27.—Bell, Lampasas, and Mills.

Bell County: On the third Monday in January and may continue in session six weeks; on the sixth Monday after the third Monday in January and may continue in session seven weeks; on the seventeenth Monday after the third Monday in January, and may continue in session eleven weeks; on the sixth Monday after the first Monday in September and may continue in session seven weeks.

Lampasas County: On the fifteenth Monday after the first Monday in January and may continue in session two weeks; on the first Monday in September and may continue in session three weeks; on the thirteenth Monday after the first Monday in September and may continue in session two weeks.

Mills County: On the seventeenth Monday after the first Monday in January and may continue in session two weeks; on the fourth Monday in September and may continue in session three weeks.

Sec. 2. That all process and writs heretofore issued out of said District Court and returnable to terms of said Court, respectively, according to existing laws, are hereby made returnable to the terms of said Court as said terms are fixed by this Act, and all bonds executed and recognizances entered into in said Court shall bind the parties for their appearances, or to fulfill the obligations of such bonds and recognizances, at the terms of said Court as they are fixed by this Act, and all process heretofore issued or taken in said District Court shall be as valid as though no change was made in the number of terms or the time of holding said Court herein, and all grand and petit jurors drawn and selected and summoned under existing laws for said Court are hereby declared lawfully drawn and selected and summoned for the first term of said District Court held in each County of said District, in conformity with this Act. As amended Acts 1937, 45th Leg., p. 802, ch. 394.

Amendment of 1937, effective 90 days after May 22, 1937, date of adjournment.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

#### 37, 45, 57, 73.—Bexar.

The District Courts of the 37th, 45th, 57th, and 73rd Judicial Districts shall have concurrent jurisdiction throughout and coextensive with



the territorial limits of Bexar County of all civil matters of which jurisdiction is given to the District Courts by the Constitution and Laws of the State in all civil cases, proceedings and matters of which the District Courts are given jurisdiction by the Constitution and Laws of the State. None of said four (4) District Courts shall have or exercise any criminal jurisdiction in Bexar County. There shall be two terms of each of said four (4) Civil District Courts in Bexar County in each year, and the first term, which shall be known as the January-June term, shall begin on the first Monday in January of each year and shall continue until and including Sunday next before the first Monday in July of each year; and the second term, which shall be known as the July-December term, shall begin on the first Monday in July of each year and shall continue until and including the Sunday next before the first Monday in the following January.

In all suits, actions or proceedings in said Courts it shall be sufficient for the address or designation to be merely "District Court of Bexar County, Texas." The Clerk of the Civil District Courts in Bexar County shall be known as "Clerk of the District Courts of Bexar County, Texas." The Clerk of said four (4) Civil District Courts shall docket alternately on the dockets of the 37th, 45th, 57th, and 73rd Judicial Districts in Bexar County all cases, actions, petitions, applications and other proceedings filed in the Civil District Courts of Bexar County, Texas, so that the first case or proceeding filed on or after the first Monday of July, 1939, and every fourth case or proceeding thereafter filed, shall be docketed in the 37th Judicial District, and the second case or proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the 45th Judicial District and the third case or proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the 57th Judicial District and the fourth case or proceeding and every fourth case or proceeding thereafter filed shall be docketed in the 73rd Judicial District, and so on seriatim, and all cases and proceedings shall in this manner be docketed in and divided and distributed among said four (4) Civil District Courts, one-fourth to each of them when first filed. All suits shall be filed by the Clerk in the order in which the petitions are presented to or deposited with him, and immediately after being so presented or deposited. In the case of disqualification of the Judge of any of said four (4) Civil District Courts in any case or proceeding, such case or proceeding, on his suggestion of disqualification, shall be transferred to another of said Courts, and the order of transfer may be made by any Judge of another of said Courts and may be transferred to any other of said Courts or instead of transferring the case the Judge of any other of said Courts may sit in the Court in which the case is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the Clerk accordingly. The Judges of said four (4) Civil District Courts shall sign the minutes of each term of said Courts in said Bexar County, Texas, within thirty (30) days after the end of the term, and also shall sign the minutes at the end of each volume of the minutes, and each Judge sitting in said Courts shall sign the minutes of such proceedings as were had before him.

Each Judge of said Court may take a vacation and not attend Court for six (6) weeks between the first day of July and the first day of October in each year, during which time the term of the Court of which he is Judge shall remain open, and the Judge of any other Civil District Court in Bexar County may hold such Court during the vacation of the Judges thereof. During the period of such vacation it shall not be lawful for a special Judge of such Court to be elected by the practicing

lawyers of such Court because of the absence of the Judge on his vacation, unless no Judge of said Civil District Courts is in the County. The Judges of said Court shall by agreement among themselves take their vacations alternately so that there shall be at all times at least two (2) of said Judges in the County; and in the absence, sickness, or disqualification of the Judge of any of said Civil District Courts, any of the other Judges of the said District Courts may act and preside, or any regularly practicing lawyer of the Bar of Bexar County may be elected who has all the qualifications of a District Judge to act and preside over any of the said Courts during such absence, sickness, or inability of any of the regular Judges to act and preside therein; such special Judge to be elected according to Title 40 of the Revised Civil Statutes of the State of Texas of 1925 as amended.<sup>1</sup> As amended Acts 1939, 46th Leg., p. 168, § 1.

<sup>1</sup> Articles 1884-1893.

Effective July 2, 1939.

Section 2 of Acts 1939, 46th Leg., p. 168, read as follows: "This Act shall take effect on and shall be in full force and effect from and after the 2nd day of July, 1939. All terms of the District Courts of the 37th, 45th, 57th, and 73rd Judicial Districts that may then be in

session shall expire at midnight on the 1st day of July, 1939."

Section 3 repealed all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the Act should take effect from and after July 2, 1939.

### 38. Medina, Uvalde, Kendall, Kerr, Bandera, Zavala, and Real.

**Medina County:** On the second Monday after the first Monday in January, and on the twenty-fourth Monday after the first Monday in January, and may continue three weeks;

**Uvalde County:** On the fifth Monday after the first Monday in January, and may continue four weeks; on the twenty-first Monday after the first Monday in January, and may continue three weeks; and on the fifth Monday after the first Monday in September, and may continue four weeks;

**Kendall County:** On the thirteenth Monday after the first Monday in January, and on the ninth Monday after the first Monday in September, and may continue two weeks;

**Kerr County:** On the ninth Monday after the first Monday in January, and may continue four weeks; and on the second Monday after the first Monday in September, and may continue three weeks;

**Bandera County:** On the fifteenth Monday after the first Monday in January, and on the eleventh Monday after the first Monday in September, and may continue two weeks;

**Zavala County:** On the first Monday in January, on the seventeenth Monday after the first Monday in January, and on the first Monday in September, and may continue two weeks;

**Real County:** On the nineteenth Monday after the first Monday in January, and on the thirteenth Monday after the first Monday in September, and may continue two weeks. [As amended Acts 1937, 45th Leg., p. 484, ch. 246, § 1.]

Amendment of 1937, effective July 1, 1937.

Sections 2 and 3 of the amendatory act of 1937, read as follows:

"Sec. 2. This Act shall take effect and be in force from and after the first day of July, 1937, and before the taking effect of this Act all terms of Court shall be held in the several counties composing said Thirty-eighth Judicial District as now provided by subdivision 38, Article

199, of the Revised Civil Statutes of Texas of 1925, as amended by Act of the Forty-first Legislature, Regular Session, Chapter 60, Page 125, Sections 1, 2, and 3.

"Sec. 3. All processes, all writs and bonds, Civil and Criminal, issued or executed prior or subsequent to the taking effect of this Act and returnable to the terms of said Courts as heretofore fixed by law in the several Counties composing said Thirty-eighth Judicial District, as

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

well as all Grand and Petit Jurors, are hereby made returnable to the terms of said Courts as said terms are here now fixed by this Act, and in conformity with the changes herein made, and all bonds executed and recognizances entered into in said Courts shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms of said Court as they are fixed by this Act, and all process of any kind heretofore issued or returned, as well as all

bonds and recognizances heretofore or hereafter taken or entered into in any of the Courts of said District, shall be as valid and as binding as if no change had been made in the time of holding said Courts. [Acts 1937, 45th Leg., p. 484, ch. 246.]"

Section 4 repeals all conflicting laws and parts of laws and section 5 declares an emergency making the act effective on and after July 1, 1937.

51. — Tom Green, Irion, Schleicher, Coke and Sterling.

The following Counties shall hereafter constitute the Fifty-first (51) Judicial District of the State of Texas, to-wit: Tom Green, Irion, Schleicher, Coke and Sterling.

The Fifty-first Judicial District Court of Texas, composed of the Counties of Tom Green, Irion, Schleicher, Coke, and Sterling, shall hold terms of Court in said Counties as follows, to wit:

Irion County: A term to begin on the first Monday in September of each year and may continue in session two (2) weeks.

A term to begin on the ninth Monday after the first Monday in January of each year and may continue in session two (2) weeks.

Schleicher County: A term to begin on the second Monday after the first Monday in September of each year and may continue in session three (3) weeks.

A term to begin on the eleventh Monday after the first Monday in January of each year and may continue in session three (3) weeks.

Coke County: A term to begin on the fifth Monday after the first Monday in September of each year and may continue in session two (2) weeks.

A term to begin on the fourteenth Monday after the first Monday in January of each year and may continue in session two (2) weeks.

Sterling County: A term to begin on the seventh Monday after the first Monday in September of each year and may continue in session two (2) weeks.

A term to begin on the sixteenth Monday after the first Monday in January of each year and may continue in session two (2) weeks.

Tom Green County: A term to begin on the tenth Monday after the first Monday in September of each year and may continue in session six (6) weeks.

A term to begin on the first Monday in January of each year and may continue in session nine (9) weeks.

A term to begin on the eighteenth Monday after the first Monday in January of each year and may continue in session nine (9) weeks. As amended Acts 1939, 46th Leg., p. 171, § 1.

Effective August 1, 1939.

Sections 3-6 of Acts 1939, 46th Leg., p. 171, read as follows:

"Sec. 3. All process and writs issued out of and all bonds and recognizances made and entered into and all grand and petit jurors drawn before this Act shall take effect, shall be held valid and returnable to the next succeeding terms of the District Court in and for the several Counties hereinabove specified as herein fixed, the same as though issued and served for such term and the same as if made returnable and drawn for the terms herein fixed and all such process, writs,

bonds and recognizances issued or taken before this Act takes effect in the District Court of the several Counties affected by this Act shall be held valid as though no change had been made in the time of holding Courts in the District herein affected, and all parties shall take notice of the change in the terms of the Court and shall answer in response to all writs and process to the terms of Court as herein specified the same as if said writs and process, bonds and recognizances had been executed, issued or entered into after the taking effect of this Act.

"Sec. 4. This Act shall not become effective until August 1, 1939, at which time it shall become effective and be in full force and effect, and thereafter the terms of Court in the several Counties constituting said Judicial Districts shall be holden as herein provided."

"Sec. 5. All laws and parts of laws in conflict herewith are hereby in all things repealed.

"Sec. 6. Nothing herein contained shall be construed as changing or affecting the

terms of Court to be held in the several Counties comprising said Districts between the date of the passage of this Act and the date it shall become final and in full force and effect as hereinabove provided."

Section 7 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Change in jurisdiction of Irion and Sterling county courts affecting district courts, see articles 1970—303 and 1970—304, post.

## 52. Coryell, Hamilton and Comanche

The Fifty-second Judicial District of Texas shall be composed of the Counties of Coryell, Hamilton, and Comanche, and the terms of District Court shall be held therein as follows: In Coryell County, on the second Monday in January and July, and may continue in session seven weeks; in Hamilton County, on the seventh Monday after the second Monday in January and July, and may continue in session seven weeks; in Comanche County, on the fourteenth Monday after the second Monday in January and July, and may continue in session seven weeks. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1921, ch. 38, § 1.]

Effective Nov. 15, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

## 62.—Hunt, Lamar, Delta and Franklin.

The 62nd Judicial District of Texas, shall be composed of the Counties of Hunt, Lamar, Delta, and Franklin and the District Courts shall be held therein each year as follows:

In Hunt County, on the first Monday in December and may continue in session eight (8) weeks; and on the third Monday after the third Monday in May, and may continue in session seven (7) weeks;

In Lamar County, on the ninth Monday after the first Monday in December and may continue in session eight (8) weeks; and on the first Monday in August and may continue in session eight (8) weeks;

In Delta County, on the seventeenth Monday after the first Monday in December and may continue in session three (3) weeks; and on the ninth Monday after the first Monday in August and may continue in session three (3) weeks;

In Franklin County, on the third Monday in May and may continue in session three (3) weeks; and on the first Monday in November and may continue in session three (3) weeks. [As amended Acts 1937, 45th Leg., p. 348, ch. 170, § 1.]

Sec. 2. The District Courts of the 8th and 62nd Judicial Districts in Hunt County, shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and laws of the State; and the District Courts of the 6th and 62nd Judicial Districts in Lamar County shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and laws of the State; and the District Courts of the 8th and 62nd Judicial Districts in Delta County shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and laws of the State; and the 76th and 62nd Judicial District Courts in Franklin County shall

have concurrent jurisdiction with each other in said County throughout the limits thereof of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and laws of the State.

Sec. 3. Either of the Judges of the District Court of Hunt County may, in his discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Hunt, by order or orders entered upon the minutes of the Court making such transfer; and, where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Court of Lamar County may, in his discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Lamar, by order or orders entered upon the minutes of the Court making such transfer; and, where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of said Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Court of Delta County may, in his discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Delta, by order or orders entered upon the minutes of the Court making such transfer; and where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Court of Franklin County may, in his discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Franklin, by order or orders entered upon the minutes of the Court making such transfer; and, where such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court.

Sec. 4. The Judge of the 62nd Judicial District shall never impanel the Grand Jury in said Court in the Counties of Hunt, Lamar, Delta, and Franklin, unless in his judgment he thinks it necessary.

Sec. 5. All processes, writs issued out of, and bonds and recognizances entered into, and all grand and petit jurors drawn and selected before this Act shall take effect shall be valid and returnable to the next succeeding term of the District Court in and for the several Counties, as herein fixed, as though issued and served for such terms, and returnable to and drawn for the same, and all such processes, writs, bonds, and recognizances taken before or issued by the Courts and officers of the various Counties affected by this Act shall be as valid as though no change had been made in the length of the terms or the time of the holding thereof of the District Courts in the Counties affected by this Act.

Sec. 6. The Clerks of the District Courts of Delta and Hunt Counties, respectively, as heretofore constituted, and their successors in office shall be the Clerks of both the 8th and 62nd District Courts in said Counties, respectively. The Clerk of the District Court of Lamar County, as heretofore constituted, and his successors in office shall be the Clerk of both the 6th and 62nd District Courts in said County, respectively. The Clerk of the District Court of Franklin County, as heretofore constituted, and his successors in office shall be the Clerk of both the 76th and 62nd District Courts in said County, respectively.

Sec. 7. Should any District Court of the 62nd Judicial District be in session in any of the Counties of said District under existing laws when this Act takes effect such Court shall continue and end its term under existing laws as if no change in the time of holding Court in said District had been made and all processes, writs, judgments, and other proceedings in said Court during such time shall be valid to all intents and purposes and shall not be affected by the changes in the time of holding Court herein made by this Act. After the period provided in the above contingency, the District Courts in said respective Counties herein mentioned, shall be held in conformity with the terms as herein prescribed.

Sec. 8. All laws and parts of laws in conflict with the provisions of this Act shall be, and the same are hereby repealed. [Acts 1937, 45th Leg., p. 348, ch. 170.]

Effective April 16, 1937.

emergency making the act effective on and after its passage.

Section 9 of act of 1937 declared an

76.—Titus, Franklin, Camp, Morris, and Marion.

Section 1. That the Seventy-sixth Judicial District of Texas shall be composed of the Counties of Titus, Franklin, Camp, Morris and Marion, and the terms of the District Court within said Counties shall be held therein as follows:

In Titus County beginning on the first Monday in January of each year and may continue in session for five (5) weeks; on the sixteenth Monday after the first Monday in January of each year and may continue in session for four (4) weeks; on the thirty-seventh Monday after the first Monday in January of each year and may continue in session for five (5) weeks.

In Franklin County on the fifth Monday after the first Monday in January of each year and may continue in session for three (3) weeks; on the thirtieth Monday after the first Monday in January of each year and may continue in session for three (3) weeks.

In Camp County on the eighth Monday after the first Monday in January of each year and may continue in session for four (4) weeks; on the thirty-third Monday after the first Monday in January of each year and may continue in session for four (4) weeks.

In Morris County on the twelfth Monday after the first Monday in January of each year and may continue in session for four (4) weeks; on the forty-second Monday after the first Monday in January of each year and may continue in session for four (4) weeks.

In Marion County on the twentieth Monday after the first Monday in January of each year and may continue in session for six (6) weeks; on the forty-sixth Monday after the first Monday in January of each year and may continue in session for six (6) weeks.

Sec. 2. The Clerk of the District Court in each of said Counties, and his successors in office, shall be the Clerk of the Seventy-sixth Judi-

cial District Court in said Counties, and shall perform all duties pertaining to the Clerkship of said Court.

The Judge and all District Officers of the Seventy-sixth Judicial District, as heretofore constituted, shall be the Judge and District Officers of the Seventy-sixth Judicial District as constituted and reorganized by this Act, during the terms for which each were respectively elected.

Sec. 3. All processes, all writs and bonds, Civil and Criminal, issued or executed prior or subsequent to the taking effect of this Act and returnable to the terms of said Court as heretofore fixed by law in the several Counties composing the Seventy-sixth Judicial District, as well as all Grand and Petit Jurors, are made returnable to the terms of said Court, as said terms are here now fixed by this Act, and in conformity with the changes made herein; and all bonds executed and recognizances entered into in said Court shall bind the parties for their appearances, or to fulfill the obligations of such bonds and recognizances at the terms of said Court as they are here fixed by this Act; and all processes of any kind heretofore issued or returned, as well as all bonds and recognizances heretofore or hereafter taken or entered into in any of the Courts of said District shall be as valid and as binding as if no change had been made in the time of holding said Courts.

Sec. 4. The District Court of the Seventy-sixth Judicial District in Titus, Franklin, Camp, Morris, and Marion Counties shall exercise general jurisdiction over civil and criminal matters as is now, or may hereafter be provided by law. The Seventy-sixth Judicial District Court in Marion County shall have concurrent jurisdiction with the Fifth Judicial District Court in said County, as to all matters of a civil nature, and all causes of action of a civil nature not disposed of at the end of the term, either of the Seventy-sixth Judicial District Court or the Fifth Judicial District Court, shall, by operation of law, be transferred from the Court whose term has expired to the other Court; and said Courts, or the Judges thereof, either in termtime, or in vacation, may transfer from one Court to the other any cause of action of a civil nature when deemed advisable by said Court to do so.

The Seventy-sixth Judicial District Court in Franklin County shall have concurrent jurisdiction with the Sixty-second Judicial District Court in said County in causes of action, civil or criminal, and all causes of action of a civil nature not disposed of at the end of the term, either of the Seventy-sixth Judicial District Court or of the Sixty-second Judicial District Court, shall, by operation of law, be transferred from the Court whose term has expired to the other Court; and said Courts, or the Judges thereof, either in termtime or vacation, may transfer from one Court to the other any cause of action, civil or criminal, when deemed advisable by said Court to do so.

Sec. 5. The Judge of the Seventy-sixth Judicial District Court in Titus County shall have summoned and empaneled a Grand Jury for the terms beginning in said County on the first Monday in January of each year and the thirty-seventh Monday after the first Monday in January of each year; and for the term beginning on the sixteenth Monday after the first Monday in January of each year the Judge of said Court in his discretion may have a Grand Jury summoned and empaneled, but the same shall not be mandatory, and in the event a Grand Jury is not had for said term all bonds, processes issued, recognizances made, and all writs of any nature whatsoever, shall be valid and returnable to the next succeeding term of Court in Titus County as though issued and served for each term.

As amended Acts 1937, 45th Leg., p. 270, ch. 142, § 1; Acts 1939, 46th Leg., p. 173, § 1.

Effective July 2, 1939.

Sec. 2 of the amendatory Act provided: "This Act shall take effect on the 2nd day of July, A. D. 1939, and shall be in force and effect from and after that date."

Section 3 repeals all conflicting laws and parts of laws.

Section 4 declared an emergency and provided that the act should take effect from and after its passage.

#### Morris County

Section 1. From and after the passage of this Act the Seventy-sixth Judicial District Court of Morris County, shall in addition to the Civil and Criminal Jurisdiction conferred upon District Courts by the Constitution and General Laws of this State have and exercise jurisdiction over all criminal matters which by the General Laws of this State are conferred upon the County Court.

Sec. 2. At the effective date of this Act all criminal cases on the docket of the County Court of Morris County shall be transferred to the docket of the Seventy-sixth Judicial District Court of Morris County.

Sec. 3. The jurisdiction of the County Court of Morris County shall be such as provided by the Constitution and General Laws of this State consistent with the change in jurisdiction of the District Court herein made.

Sec. 4. All appeals from criminal cases in the Justice Court of Morris County shall be made to the Seventy-sixth Judicial District Court of Morris County. Acts 1939, 46th Leg., p. 195.

Effective April 27, 1939.

Section 5 of the Act of 1939 repeals all conflicting laws and parts of laws; section 6 declared an emergency and provided that

the act should take effect from and after its passage.

Franklin County. See, also, 62nd Judicial District.

#### 77, 87.—Limestone and Freestone.

Limestone and Freestone counties, see, also, 87th Judicial district, post.

#### 80.—The Eightieth District shall be composed of Harris County.

See, also, 11th Judicial District, ante, and 113th Judicial District, post.

#### 84.—Carson, Hutchinson, Hansford, Ochiltree and Hemphill.

The 84th Judicial District shall be composed of the Counties of Carson, Hutchinson, Hansford, Ochiltree and Hemphill.

The terms of the District Court for the 84th Judicial District of the State of Texas shall, for and during the remaining portion of the year 1937, after this Act takes effect, be held as follows:

Beginning in Hemphill County on the second Monday in May and may continue in session four weeks.

Beginning in Hutchinson County on the first Monday in June and may continue in session seven weeks.

Beginning in Carson County on the last Monday in August and may continue in session four weeks.

Beginning in Hutchinson County on the last Monday in September and may continue in session five weeks.

Beginning in Hansford County on the first Monday in November and may continue in session two weeks.

Beginning in Ochiltree County on the third Monday in November and may continue in session three weeks.

Beginning in Hemphill County on the first Monday in December and may continue in session four weeks.



The terms of the District Court of the 84th Judicial District of the State of Texas for and during the year A. D., 1938 and thereafter, shall be held in said District for the said year 1938 and each year thereafter as follows:

Beginning in Carson County on the first Monday in January of each year and may continue in session four weeks; and also beginning in Carson County on the last Monday in August of each year and may continue in session four weeks.

Beginning in Hutchinson County on the fourth Monday after the first Monday in January of each year and may continue in session nine weeks; and also beginning in Hutchinson County on the twenty-second Monday after the first Monday in January of each year and may continue in session eight weeks; and also beginning in Hutchinson County on the fourth Monday after the last Monday in August of each year and may continue in session five weeks.

Beginning in Hansford County on the thirteenth Monday after the first Monday in January of each year and may continue in session two weeks; and also beginning in Hansford County on the ninth Monday after the last Monday in August of each year and may continue in session two weeks.

Beginning in Ochiltree County on the fifteenth Monday after the first Monday in January of each year and may continue in session three weeks; and also beginning in Ochiltree County on the eleventh Monday after the last Monday in August of each year and may continue in session three weeks.

Beginning in Hemphill County on the eighteenth Monday after the first Monday in January of each year and may continue in session four weeks; and also beginning in Hemphill County on the fourteenth Monday after the last Monday in August of each year and may continue in session four weeks. As amended Acts 1937, 45th Leg., p. 688, ch. 346.

Amendment of 1937 effective May 15, 1937.

Section 2 of the amendatory act 1937 read as follows:

"Sec. 2. That all processes, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said Court in each of said Counties comprising the 84th Judicial District, and also process heretofore returnable, as well as all bonds and recognizances heretofore entered into in any of said Courts in said Judicial District, shall be valid and binding.

"All process issued or served before this Act goes into effect to the District Court of any of said Counties shall be considered as returnable to said Court in accordance with the terms prescribed by this Act, and also such process is hereby legalized and all grand and petit jurors

drawn and selected under existing laws in any of the Counties of said Judicial District for a term of Court after this Act becomes effective, shall be considered lawfully drawn and selected for the next term of the District Court for these prescribed Counties, held in accordance with this Act; provided, however, that if there should be a term of Court being held at the time this Act goes into effect, said term of Court shall remain and continue in session until said term is ended and terminated under the law as it exists prior to the time this Act takes effect."

Section 3 repeals all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

### 87.—Anderson, Limestone, Freestone and Leon.

Section 1. That from and after the first day of July, A. D., 1939, the 87th Judicial District shall be composed of and confined to Anderson, Limestone, Freestone and Leon Counties, Texas, and the terms of the District Court in each of said counties shall be held therein each year as follows:

In Anderson County, on the first Monday in February and August, and shall continue for eight weeks.

In Limestone County, on the first Monday in May and November and shall continue five weeks.

In Freestone County, on the first Monday in January, April, July and October, and shall continue four weeks.

In Leon County, on the fifth Monday after the first Monday in May, and on the fifth Monday after the first Monday in November any may continue three weeks. As amended Acts 1939, 46th Leg., p. 181, § 1.

Effective June 30, 1939.

Section 2 of the amendatory Act of 1939, p. 181, read as follows: "That all processes issued or served before this Act takes effect, including recognizances and bonds returnable to the District Court of any of the counties of said 87th Judicial District, shall be considered as returnable to said Court in accordance with the terms as prescribed in this Act, and all such processes are hereby legalized and all

grand and petit juries as drawn and selected under the existing laws in any of the counties of said District, shall be considered lawfully drawn and selected, for the next term of the District Court of the respective counties, after this Act takes effect, and all such processes are hereby legalized and validated."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Sec. 2. The Judge of the 87th Judicial District now elected and acting as such, shall, after the passage of this Act, continue to hold the office of District Judge until the time for which he has been elected expires, and until his successor is duly elected and qualified.

Sec. 3. The Clerk of the District Court of each of the Counties of Anderson, Limestone, Freestone and Leon, and his successor in office, shall be the Clerk of the 87th Judicial District Court from and after the passage of this Act, in his respective county, until the time for which he has been elected expires, and until his successor is duly elected and qualified.

Sec. 4. The District Attorney of the 12th Judicial District now elected and acting, shall represent the State in all criminal and civil actions in which the State is interested, arising in the 87th Judicial District of Leon County, Texas.

In Anderson County, the District Attorney of the Third Judicial District now elected and acting, shall continue to represent the State in all criminal and civil actions in which the State is interested, arising in the 87th District Court of said County. In Freestone and Limestone Counties, the County Attorney of each county shall continue to represent the State in all criminal and civil actions in which the State is interested, arising in the 87th Judicial District in said counties respectively.

Sec. 5. That the District Court of the 87th Judicial District, shall have such jurisdiction and power as is conferred on District Courts under the Constitution and existing laws of Texas, and as shall be hereafter given by law.

Sec. 6. The Judge of the 12th Judicial District of Texas, may, in his discretion, either in term time or in vacation, by order entered upon the minutes of the District Court of Leon County, transfer any case or cases that may at that time be pending in said 12th Judicial District Court of that county, to the District Court of the 87th Judicial District, reorganized by this Act, and holding session in that county, and said 87th District Court shall have the same power and authority to try and finally dispose of such case or cases so transferred as the Court possessed from which the same were transferred; and the Judge of the 87th District Court may, in his discretion, either in term time or in vacation by order or orders entered upon the minutes of his Court, in Leon County, transfer any case or cases pending upon his docket to the District Court of the 12th Judicial District, holding sessions in Leon County, and when such case or cases are transferred, the Court in which the transfer is made shall have the same right and authority to try and finally dispose

of same as was originally had by said 87th District Court. In all counties wherein there are two separate District Courts, under the provisions of this Act, either of the Judges of said Courts may in their discretion, either in term time, or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said county, by order or orders entered upon the minutes of the Court making such transfer; and, when such transfer or transfers are made, the clerks of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and when so entered upon the docket the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court.

Sec. 7. Any party or persons desiring to bring a civil suit over which the District Court of the 12th Judicial District has jurisdiction in Leon County, shall have the right to file same either in said Court or in the 87th District Court, hereby reorganized, subject to the rights of the Judges of said Courts to transfer the same as herein provided.

Sec. 8. The District Clerk of Leon County shall, immediately upon taking effect of this Act, secure a seal having engraved thereon a star of five points in the center and the words, "87th District Court of Leon County, Texas," and the imprints of which shall be attached to all processes, issued out of said 87th District Court, except subpoenas out of said 87th District Court in said county, and shall be kept by said Clerk and used to authenticate his official acts as Clerk of said Court.

Sec. 9. That all processes issued or served before this Act takes effect, including recognizances and bonds returnable to the District Court of any of the counties of said 87th Judicial District, shall be considered as returnable to said Court in accordance with the terms as prescribed in this Act, and all such process is hereby legalized and all grand and petit juries as drawn and selected under the existing laws in any of the counties of said District, shall be considered lawfully drawn and selected for the next term of the District Court of the respective counties, after this Act takes effect, and all such processes are hereby legalized and validated; providing, that if any Court in any county of said District shall be in session at the time this Act takes effect, such Court or Courts affected hereby shall continue in session until the term thereof has expired under the provisions of the existing laws, but thereafter the Court in such county or counties shall conform to the requirements of this Act.

Sec. 10. Nothing in this Act shall be construed as in any way affecting the process, term, jurisdiction or authority of the District Court of the 12th Judicial District of Texas, except as herein specially provided and especially conferred upon said 87th District Court hereby reorganized, and all process issued in any case pending in the District Court of the 12th Judicial District shall be equally valid in any case or cases transferred to said 87th District Court. Acts 1939, 46th Leg., p. 176.

Effective April 24, 1939.

Sections 11-13 of Acts 1939, 46th Leg. p. 176, relate to the 12th Judicial District and are set out under 12th Judicial District, ante.

Section 14 of the Act of 1939 repealed all laws or parts of laws in conflict with the provisions of that Act, and provided that the Act "shall take effect and be operative on and after the passage of this

bill, and shall continue in force except as otherwise herein provided."

Section 15 of the Act of 1939 provided "If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

Section 16 declared an emergency and provided that the act should take effect from and after its passage.

Prior acts relating to the 87th Judicial District Court, see Acts 1935, 44th Leg. p.

422, ch. 171, amended by Acts 1935, 44th Leg. 1st C.S., p. 1546, ch. 374, § 1.

Limestone and Freestone counties, see 77th Judicial District, ante.

102. ——— Bowie and Red River.

The 102nd Judicial District of Texas shall be composed of the counties of Bowie and Red River; and the terms of the District Courts within said counties shall be held therein as follows:

In Red River County beginning on the first (1st) Monday in January and may continue in session for six (6) weeks; on the fourteenth (14th) Monday after the first (1st) Monday in January and may continue in session six (6) weeks; on the thirtieth (30th) Monday after the first (1st) Monday in January and may continue in session six (6) weeks; on the forty-second (42nd) Monday after the first (1st) Monday in January and may continue in session six (6) weeks.

In Bowie County beginning on the sixth (6th) Monday after the first (1st) Monday in January and may continue in session eight (8) weeks; on the twentieth (20th) Monday after the first (1st) Monday in January and may continue in session ten (10) weeks; on the thirty-sixth (36th) Monday after the first (1st) Monday in January and may continue in session six (6) weeks; on the forty-eighth (48th) Monday after the first (1st) Monday in January and may continue in session four (4) weeks.

The Clerk of the District Court in each of the said counties and his successor in office shall be the Clerk of the 102nd Judicial Court in said counties and shall perform all duties pertaining to the Clerkship of said Court.

The District Court of the 102nd Judicial District in Bowie and Red River Counties shall exercise general jurisdiction over civil and criminal matters as is now or may hereafter be conferred by law.

Said 102nd District Court shall also have concurrent jurisdiction in Bowie County with the 5th Judicial District Court, and all causes of action of a civil nature pending in either Court in said county shall, at the end of each term of such Court in which the same is pending, be transferred by operation of law to the other Court, except where the next succeeding term of the 5th District Court will convene before the next term of the 102nd District Court in said county; and said Courts, and the Judges thereof, either in term time or vacation, may transfer any civil or criminal cause pending in their respective Courts to the other District Court in said county by an order entered upon the minutes of their respective Courts.

All process issued, bonds and recognizances made, and all grand and petit jurors drawn before this Act takes effect shall be valid and returnable to the next succeeding terms of the District Courts of the several counties as herein fixed respectively as though issued and served for such terms and Courts and returnable to and drawn for the same.

The Judge and all district officers of the 102nd Judicial District as heretofore constituted shall be the Judge and district officers of the 102nd Judicial District as constituted and reorganized by this section during the terms for which they each respectively were elected. [As amended Acts 1937, 45th Leg., p. 268, ch. 141, § 1.]

Effective April 10, 1937.

Section 2 of the amendatory act of 1937 repeals all conflicting laws and parts of laws; Section 3 declared an emergency and provided that the act should take effect from and after its passage.

Changing jurisdiction of county court affecting district court of Red River County, see article 1970—314.

## 104.—Jones, Fisher and Taylor.

The One Hundred and Fourth Judicial District of the State of Texas is composed of the Counties of Jones, Fisher, and Taylor, and the District Courts and the terms thereof in said Counties shall be held in said Counties as follows:

Said Court shall convene in Jones County on the first Monday in January of each year and may continue in session seven (7) weeks, on the 15th Monday after the first Monday in January, and may continue in session six (6) weeks; and on the first Monday in September and may continue in session six (6) weeks.

Said Court shall convene in Fisher County on the seventh Monday after the first Monday in January of each year and may continue in session three (3) weeks, and on the 21st Monday after the first Monday in January and may continue in session three (3) weeks; and on the sixth Monday after the first Monday in September, and may continue in session three (3) weeks.

Said Court shall convene in Taylor County on the 11th Monday after the first Monday in January of each year, and may continue in session four (4) weeks; and on the 24th Monday after the first Monday in January and may continue in session six (6) weeks; and on the 9th Monday after the first Monday in September and may continue in session seven (7) weeks. As amended Acts 1939, 46th Leg., p. 182, § 1.

Sec. 2. All process issued out of the District Courts of any of the Counties named in this Act, issued or served before this Act takes effect, including recognizances and bonds, returnable to the District Courts of any of such respective Counties, shall be considered as returnable to such respective Courts in accordance with the terms and times of holding same as prescribed in and fixed by this Act; and all such process is hereby legalized. And all Grand and Petit Juries drawn and selected under existing laws for any of the Counties of said District shall be considered lawfully drawn and selected for the next of the respective District Courts held after this Act takes effect, and all such process is hereby legalized and validated. Acts 1939, 46th Leg., p. 182.

Effective Sept. 1, 1939.

Section 3 of the amendatory act of 1939 repeals all conflicting laws and parts of laws.

Section 4 provided that the Act should become effective on the 1st day of Septem-

ber, 1939, and should be in force and effect thereafter.

Section 5 declared an emergency and provided that the act should take effect from and after its passage.

## 113.—Harris.

Acts 1939, 46th Leg., p. 184, § 3, amended so much of Article 199 as related to the District Courts of Harris County as amended by Acts 1927, 40th Leg., p. 135,

ch. 88, § 1, and Acts 1930, 41st Leg., 5th C.S., p. 131, ch. 14, to read as now set out under Judicial Districts "11, 55, 61, 80, 113, 127.—Harris," ante.

## 119. — Coleman, Concho, Runnels and Tom Green.

There is hereby created, organized and established the One Hundred and Nineteenth (119) Judicial District of Texas. Said One Hundred and Nineteenth (119) Judicial District of Texas shall be composed of the following Counties, to wit: Coleman, Concho, Runnels and Tom Green.

The One Hundred and Nineteenth Judicial District of Texas, composed of the Counties of Coleman, Concho, Runnels, and Tom Green, shall hold terms of Court in said Counties as follows, to wit:

Concho County: A term to begin on the last Monday in August of each year and may continue in session three (3) weeks.

A term to begin on the fifth Monday after the second Monday in January of each year and may continue in session three (3) weeks.

Tom Green County: A term to begin on the third Monday after the last Monday in August of each year and may continue in session eight (8) weeks.

A term to begin on the eighth Monday after the second Monday in January and may continue in session eight (8) weeks.

Runnels County: A term to begin on the eleventh Monday after the last Monday in August of each year and may continue in session six (6) weeks.

A term to begin on the sixteenth Monday after the second Monday in January of each year and may continue in session five (5) weeks.

Coleman County: A term to begin on the second Monday in January of each year and may continue in session five (5) weeks.

A term to begin on the twenty-first Monday after the second Monday in January of each year and may continue in session five (5) weeks. As amended Acts 1937, 45th Leg., p. 693, ch. 349; Acts 1939, 46th Leg., p. 171, § 2.

Effective August 1, 1939.

For sections 3-7 of Acts 1939, 46th Leg., p. 171, see note under 51st Judicial District, ante.

Tom Green County, see, also, 51st Judicial District, ante.

#### 124.—Gregg, and Special District Court for Gregg County.

Sec. 8. Said Special District Court of Gregg County, Texas, created by this Act, shall automatically cease to exist on the 25th day of January, 1943, and all terms and provisions thereof shall be and become of no further force and effect upon said date. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1915, ch. 34, § 1.]

Effective 90 days after Oct. 26, 1937, date of adjournment.

Section 2 of the amendatory act of 1937

declared an emergency and provided that the act should take effect from and after its passage.

Sec. 22. (a) Said Criminal District Attorney is hereby authorized to appoint at his discretion a First Assistant Criminal District Attorney who shall receive a salary of Thirty-six Hundred Dollars (\$3600) per annum, and said Criminal District Attorney is hereby authorized to appoint at his discretion a Second Assistant Criminal District Attorney who shall receive a salary of Three Thousand Dollars (\$3,000) per annum, and the salaries of said Assistant Criminal District Attorneys shall be paid out of the General Fund of the County in twelve (12) equal monthly installments by warrants drawn on said Fund. Such Assistant Criminal District Attorneys shall take the Constitutional Oath of office and be authorized to represent the State in all of the Courts of the County in which the Criminal District Attorney is authorized by this Act to represent the State, such authority to be exercised under the direction of the Criminal District Attorney, and such Assistants shall be subject to removal at the will of the Criminal District Attorney. Each of said Assistants shall be and are hereby authorized to administer oaths, file informations, examine witnesses before the Grand Jury and generally perform any duty devolving upon the Criminal District Attorney, and to exercise any power conferred by law upon the County and District Attorneys, and the Criminal District Attorney when by him so authorized. The Criminal District Attorney shall be paid the same fees for services rendered by his Assistants as he would be entitled to receive if the services had been rendered by himself.

(b) Providing further that the Criminal District Attorney is hereby authorized when in his judgment the efficient conduct of his office so requires to appoint a criminal investigator who shall receive a salary of Three Thousand Dollars (\$3,000) per year. Such Criminal District At-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

torney may, also, if in his judgment the efficient conduct of his office so requires, appoint a stenographer for said office who shall receive a salary of Eighteen Hundred Dollars (\$1800) per year. The salary of such investigator and stenographer shall be paid out of the General Fund of the County in which they are appointed in twelve (12) equal installments, upon the certificate of the Criminal District Attorney by warrants drawn on said fund. As amended Acts 1937, 45th Leg., p. 655, ch. 324, § 1.

Amendment of 1937, effective May 13, 1937.

Section 2 of the amendatory act of 1937, provides that: "The provisions of this Act shall in no wise alter, change, amend, or repeal the provisions of House Bill No. 157, passed at the Regular Session of the Forty-fifth Legislature, 1937 [Art. 326k—

8], but the provisions of said House Bill No. 157 shall remain in full force and effect."

Section 3 repeals all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

### 127.—Harris.

See Judicial Districts "11, 55, 61, 80, 113, 127.—Harris," ante.

## TITLE 10A—ARCHITECTS [NEW]

Art.  
249a. Architects to register.

Art.  
249b. Certificate of registration; persons entitled to receive without examination; fee; affidavit [New].

**Art. 249a. Architects to register**

Section 1. That in order to safeguard life, health, and property, and the public welfare, and in order to protect the public against the irresponsible practice of the profession of architecture by properly defining and regulating the practice of architecture, no person shall practice architecture, as herein defined, within this State, after ninety (90) days after the appointment and qualification of the members of the Board of Architectural Examiners hereinafter created, unless he be a registered architect, as provided by this Act.

**Board of Architectural Examiners created; qualification; term of office; vacancies**

Sec. 2. A Board of Architectural Examiners is hereby created, to be composed of three members, each of whom shall have engaged in the practice of architecture for a period of five (5) years or more, to be appointed by the Governor of this State within thirty (30) days after this Act becomes effective, and said appointment shall be approved by a two-thirds vote of the Senate. One member of said Board shall hold office for the period of two (2) years from and after his or her appointment. One of the members of said Board shall hold office for the period of four (4) years from and after his or her appointment. One member of said Board shall hold office for the period of six (6) years from and after his or her appointment. Each of the members of said Board shall retain his or her office until his or her successor is duly appointed and qualified. The Governor of this State shall appoint a successor to each person whose term of office shall expire, and such appointment shall be approved by a two-thirds vote of the Senate, and such person so appointed shall hold office for the period of six (6) years from and after his or her appointment, and he or she shall be a registered architect, and have such other qualifications as provided by this Act. The person so appointed shall be a resident citizen of and legal voter of this State and shall have engaged in the practice of architecture for a period of ten (10) years or more. All vacancies occurring in the membership of said Board shall be filled by appointment by the Governor of this State for the unexpired term of such membership, and such appointments shall be approved by a two-thirds vote of the Senate.

Not more than one member of said Board shall be a stockholder or owner of any interest in, nor be a member of the faculty, or board of trustees, or other governing board of, nor be an officer of, any school or college which teaches architecture.

A member of said Board shall not be disqualified for nor prohibited from performing any work or rendering any service on any State, county, municipal, or other public building or work for a fee or other direct compensation because of membership on said Board.

**Oath; organization of Board; Board of Secretary-treasurer; powers and duties; rules and regulations**

Sec. 3. The members of the Board of Architectural Examiners shall, before entering upon the discharge of their duties, qualify, by subscribing to, before a notary public or other officer authorized by law to ad-



minister oaths, and filing with the Secretary of State, the Constitutional oath of office. They shall, as soon as organized, and biennially thereafter in the month of January, elect from their number, a chairman, vice-chairman, and secretary-treasurer. The Secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars (\$5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer, and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the Board of Architectural Examiners.

The Board shall adopt all reasonable or necessary rules, regulations, and bylaws to govern its proceedings and activities, not inconsistent with this Act, the laws of this State, or of the United States, which it may deem advisable. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border, shall contain the words, "Texas Board of Architectural Examiners." The Secretary-treasurer of the Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, known place of residence, and the date and serial number of the registration certificate of every registered architect entitled to practice his or her profession in this State, and a record of all renewals of such certificates. The records shall be kept by the Secretary-treasurer of the Board, and such records shall be audited biennially during the month of January by a certified public accountant, a report of the findings of such audit shall be made to the Governor of this State, and a copy of said report shall be delivered to the Secretary-treasurer of the Board, who shall retain same as a permanent record of the office.

The Board shall cause the prosecution of all persons violating any of the provisions of this Act, and may incur the expense reasonably necessary in that behalf.

**Fees, disposition of; salaries and expenses; Architects' Registration Fund**

Sec. 4. All fees which are provided to be charged by virtue of this Act shall be deposited in the State Treasury, to the credit of a fund to be known as "Architects Registration Fund," and an appropriation from said Fund, in an amount not to exceed Four Thousand Dollars (\$4,000) per year, and in no case more than the amount on hand in said Fund, is hereby made and authorized to pay all salaries, compensations, and other expenses of said Board, or incurred by said Board in the discharge of their duties. Said salaries, compensations, and other expenses shall be paid by drafts for the proper amounts drawn upon said Fund and signed by the Secretary-treasurer and countersigned by the Chairman of said Board.

If, at any time when the books and records of the Board are audited, as provided for in Section 3 of this Act, it is found that there is more than Five Thousand Dollars (\$5,000) on hand in the hereinabove named Architects Registration Fund, and in the hands of the Board, then all

money over and above that total amount, Five Thousand Dollars (\$5,000), shall be permanently diverted to the General Revenue Fund of this State.

The Secretary-treasurer of the Board shall receive such monthly compensation for his or her services as shall be determined by the Board, by resolution adopted at a regular meeting of said Board, but in no case shall such compensation exceed One Thousand, Eight Hundred Dollars (\$1,800) per year, exclusive of allowable expenses of office. The other members of the Board shall each receive as compensation for their services, in addition to their necessary expenses, the sum of Ten Dollars (\$10) for each and every day actually spent by them in going to, attending, and returning from regular and special meetings of said Board, and in conducting examinations of applicants for registration certificates as provided for by this Act, and in prosecuting violations of this Act, but in no case shall the compensation to any one member of the Board, other than the Secretary-treasurer of the Board, exceed Three Hundred Dollars (\$300) per year, exclusive of allowable expenses.

#### **Quorum; meetings; rules and regulations**

Sec. 5. Two members of the Board shall constitute a quorum. Regular meetings of the Board shall be held at such times as the Board may fix and determine. Special meetings of the Board shall be called by the Chairman, or in his absence from the State, or inability to act, by the vice-chairman of the Board. Notice of the time and place of all meetings shall be given in writing to each member of the Board by the mailing of such notices to him or her, at his or her last known address, at least ten (10) days prior to the time of such meeting. Such notice shall be given by the Secretary-treasurer, or by the officer calling the meeting.

The Board shall adopt rules and regulations for the examination and registration of applicants to practice architecture in accordance with the provisions of this Act, and may amend, modify, and repeal such rules and regulations from time to time. The Board shall, within fifteen (15) days after the election of officers thereof, and upon the adoption, modification, or repeal of its rules, regulations, or bylaws governing proceedings, or its rules and regulations for examination of applicants for registration certificates, file with the Secretary of State, and publish in one daily newspaper of general circulation within the State and published in the State, and in an architectural journal published in the State, and if there be none, then in a second daily newspaper published in the State in a city different from that in which the other newspaper is published, at least twice, the name and address of each officer of the Board, and a copy of such rules, regulations, or bylaws, or the amendments, modifications, or repeals thereof.

#### **Examinations; qualifications of applicants for registration**

Sec. 6. Provision shall be made by the Board of Architectural Examiners for holding examinations of applicants for registration under this Act, at such place or places as may be determined by the Board, at least twice each year, if there be applicants. Any person of good moral character, over twenty-one years of age, upon payment of a fee of Five Dollars (\$5) to the Secretary-treasurer of the Board, shall be entitled to enter the examination to determine his or her qualifications. All examinations shall be governed and directed by said Board, or by a committee of two of its members delegated by the Board, and due notice of the time, scope of examination, and place of holding such examination shall be published, as in the case provided for the publication of rules and regulations of the Board. The examination shall cover those sub-

jects to be determined and prescribed by the Board, the knowledge of which is necessary in the proper practice of architecture.

**Certificate; fee; registration of certificate; application to practicing architects; copartnerships**

Sec. 7. If the result of the examination of an applicant shall be satisfactory to a majority of the Board, under its rules, the Secretary-treasurer shall, upon an order from the Board, issue to the applicant a certificate to that effect and upon payment to the Secretary-treasurer of the Board by the applicant of a fee of Twenty-five Dollars (\$25), he shall thereupon issue, and cause to be recorded in the office of the Secretary of State and delivered to the person therein named, a registration certificate bearing a serial number authorizing him or her, subject to the provisions of this Act, to practice the profession of architecture in this State for a period of one year from the date of such certificate; provided, however, that same may be renewed from year to year in accordance with the provisions of this Act as set forth in Section 13.

Any person of good moral character who shall, at the time that this Act becomes effective, be practicing architecture in this State as his or her principal vocation, and who was engaged in the practice of architecture for a period of at least six (6) months prior to the passage of this Act, and who shall present to the Board an affidavit to that effect, shall be entitled to receive such certificate without examination, and upon payment to the Secretary-treasurer of the Board of a fee of Twenty-five Dollars (\$25), the Secretary-treasurer of the Board shall issue a registration certificate as above required to each such person having complied with the provisions of this Act; provided, however, that the Board may, in its discretion, require further evidence than the affidavit hereinabove provided for, that the applicant was actually engaged in the practice of architecture at the time that this Act became effective and for six (6) months prior thereto. Such practicing architects shall be required to file their application for registration under this Act within ninety (90) days after the appointment and qualification of the members of the Board of Architectural Examiners.

Coincident with its issue, the Board shall cause each registration certificate issued by it to be recorded in the office of the Secretary of State. For the purpose of recording such certificates, the Secretary of State shall keep a book, or books, of suitable size and character, to be known as the "Register of Architects" and shall record each such certificate on a separate page of said book, together with the date same was filed for record, and the residence of the certificate holder at the time of filing same for record.

In the case of copartnership of architects, each partner must be registered to practice architecture. No firm or partnership shall be registered to practice architecture, but may practice as such provided each member of such firm or partnership is a registered architect in accordance with the provisions of this Act.

**Practicing architects from other states; fees**

Sec. 8. An architect of good moral character who has lawfully practiced architecture for a period of ten (10) years or more outside this State, or partly within and partly without this State, may be required at the discretion of the Board, in order to obtain a registration certificate to practice architecture in this State, to take only a practical examination the nature of which shall be prescribed by the Board of Architectural Examiners, provided that, as a condition precedent to the issuance of a registration certificate to such applicant, the Board may re-

quire him or her to furnish and file evidence satisfactory to the Board that he or she has not been restrained from practicing architecture in any other State or jurisdiction on account of negligence, incompetency, recklessness, dishonesty, or other causes to be grounds for the revocation of a registration certificate in this State, or that no registration certificate or other license, or permit to practice architecture, theretofore issued to him or her has ever been so revoked, and upon failure of the applicant to furnish and file such satisfactory evidence, the Board may, in its discretion, refuse to issue a registration certificate to him or her authorizing him or her to practice architecture in this State.

An architect who has legally practiced architecture in another State of the United States, or country outside the border of the United States, where the qualifications prescribed by law were, at the time he or she practiced in that State or country, substantially equal to those prescribed in this State at the date of his or her application, may obtain a registration certificate to practice architecture in this State merely by furnishing evidence satisfactory to the Board of the fact that he or she has so lawfully practiced in such other State or country; provided that the laws or legal regulations of that State or country extend like or similar privilege to registered architects of this State applying for the right to practice architecture in such other State or country.

The fee to be paid by an architect of another State or country, applying for his or her original registration certificate to practice architecture in this State, shall be the sum of Thirty Dollars (\$30).

**Exemption from examinations; fee**

Sec. 9. Any person of good moral character making application for a registration certificate to practice architecture in this State who presents to the Board a diploma of graduation or satisfactory certificate from an architectural school or college, certifying that he or she has completed a technical course approved by the Board of Architectural Examiners, together with evidence of at least three (3) years satisfactory experience, subsequent thereto, in the office or offices of a reputable architect or architects, shall be entitled to a registration certificate as provided for by this Act, without being required to stand an examination therefor. The Board shall publish a list of approved schools, and any addition, eliminations, or changes therein, from time to time, as changes occur.

The fee to be paid by an applicant for a registration certificate, under this Section of this Act, shall be the sum of Twenty-five Dollars (\$25).

**Seal to be used by architect**

Sec. 10. Every registered architect shall obtain and keep a seal, such as is authorized, prescribed, and approved by the Board of Architectural Examiners, with which he or she shall stamp all drawings or specifications issued from his or her office for use in this State. The design of the seal shall be the same as that to be used by the Board of Architectural Examiners as provided for in Section 3 of this Act, except that it shall bear the words "Registered Architect, State of Texas," instead of "Texas Board of Architectural Examiners."

**Practicing architecture; registration certificates, necessity of; exceptions**

Sec. 11. Any person, or firm, who for a fee or other direct compensation therefor, shall engage in the planning, or designing, or supervising the construction of buildings to be erected or altered in this State, by or for other persons than themselves, as a profession or business, and shall represent or advertise themselves as architects, architectural de-

signers, or other title of profession or business using some form of the word "architect," shall be considered as practicing the profession of architecture in this State, and shall be required to comply with the provisions of this Act; and no person or firm shall engage in or conduct the practice of architecture as aforesaid in this State unless a registration certificate or certificates therefor have been duly issued to such person or the members of such firm as provided for by this Act, and no firm or partnership shall engage in, or conduct, the practice of architecture as aforesaid within this State except by and through persons to whom registration certificates have been duly issued, and which certificates are in full effect; but nothing in this Act shall prevent draftsmen, students, clerks of works, superintendents, or other employees or assistants of those legally practicing architecture under registration certificates as herein provided for, from acting under the instruction, control, or supervision of such registered architects.

Nothing in this Act shall prevent qualified professional engineers from planning and supervising work, such as railroads, hydro-electric work, industrial plants, or other construction primarily intended for engineering use or structures incidental thereto, nor prevent said engineers from planning, designing, or supervising the structural features of any building, but such engineers shall not employ the title "architect" in any way, nor represent themselves as such, nor shall any engineer practice the profession of architecture as defined herein, unless he or she be registered as an architect under the provisions of this Act.

#### **Revocation or cancellation of certificates**

Sec. 12. Registration certificates of architects issued in accordance with this Act, shall remain in full force and effect until expiration date unless revoked for cause as herein provided.

The registration certificate and right of any person to practice architecture in this State may be revoked and cancelled by any District Court of this State, in a suit by the State upon the relation of the Board of Architectural Examiners, upon the proof of the violation of the law in any respect in regard thereto, or for any cause for which the Board of Architectural Examiners is authorized to refuse to grant registration certificates, or for proof of gross incompetency, or for recklessness in the construction of buildings on the part of the architect designing, planning, or supervising the construction or alteration of same, or for dishonest practice on the part of the holder of such registration certificate; and when requested by the Board, the several District and County Attorneys of this State shall have the authority, and it shall be their duty, to file and prosecute appropriate judicial proceedings in the name of the State against such persons. The venue of each suit shall be in the county of the residence of the holder of such registration certificate.

#### **Annual fee; certificate of renewal; failure to obtain renewal; notice of revocation**

Sec. 13. Every registered architect in this State who desires to continue the practice of his or her profession shall annually, during the time he or she shall continue in such practice, pay the Secretary-treasurer of the Board during the month of July, a fee of Ten Dollars (\$10), and the Secretary-treasurer shall thereupon issue to such registered architect, and file for record with the Secretary of State, a certificate of renewal of his or her registration certificate for the term of one year. In the case of those persons paying their first renewal fee after the expiration of their original registration certificate, such fee shall be due in the month of July first succeeding the expiration date of the original registration

certificate issued to such person, and such certificate shall remain in force until the end of such month. Any registered architect who shall fail to have his or her registration certificate renewed during the month of July of each and every year shall have his or her registration certificate revoked; and it shall be the duty of the Secretary-treasurer of the Board to give notice of such revocation to the Secretary of State, whereupon the Secretary of State shall make an entry of such revocation accordingly upon the page of the Register of Architects containing the record of the registration certificate which is revoked. But the failure to renew such registration certificate in the time stated shall not deprive such architect of the right of renewal thereafter; but the fee to be paid upon the renewal of a registration certificate after the month of July and before the first of January of the year following shall be Fifteen Dollars (\$15) to cover the additional expense incurred by the Board in effecting the renewal; and, in the event that the renewal is not made before the first day of January of the year following, the applicant shall be required to take and satisfactorily pass such examination as may be prescribed by the Board, and if the applicant passes such examination successfully, the fee to be paid upon the renewal of the registration certificate shall be, in such case, the sum of Thirty Dollars (\$30).

#### Report of proceedings of Board

Sec. 14. Immediately after the organization of the Board, and annually thereafter, the Secretary-treasurer of the Board shall file with the Secretary of State a full report of the proceedings of the Board during the preceding year, subscribed by the Chairman and Secretary-treasurer of the Board, and attested by the seal of the Board of Architectural Examiners.

#### Penalty

Sec. 15. If any person, or firm, shall, for a fee or other direct compensation, pursue the practice of the profession of architecture in this State as herein defined, or shall engage in this State in the profession or business of planning, or designing, or supervising the construction of buildings to be erected or altered by or for other persons than himself, herself, or themselves, and shall advertise, or put out any sign, card, or drawings in this State designating himself, herself, or themselves as an architect, architectural designer, or other title of profession or business using some form of the word "architect" without first having complied with the provisions of this Act, such person, or the members of such firm, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25), and not more than Two Hundred Dollars (\$200), for each offense; and each and every day of violation of this Act as above set forth, shall constitute a separate offense.

#### Exceptions from act

Sec. 16. This Act shall not apply:

1. To the practice of architecture solely as an officer or employee of the United States, but persons so engaged or employed shall not engage in the private practice of architecture in this State without first having a registration certificate as herein provided.
2. To legally qualified architects residing in another State or country outside the border of the United States, who do not maintain nor open offices in this State, provided that such architects, when undertaking or conducting the practice of architecture as herein set forth in this State, shall employ a registered architect of this State as a consultant, or shall act as a consultant of a registered architect in this State.

3. To any person, or firm, who prepares plans and specifications for the erection or alteration of a building, or supervises the erection or alteration of a building by or for other persons than himself, herself, or themselves, but does not in any manner represent himself, herself, or themselves to be an architect, architectural designer, or other title of profession or business using some form of the word "architect." [Acts 1937, 45th Leg., p. 1279, ch. 478.]

Effective 90 days after May 22, 1937, date of adjournment.

Section 17 of Acts 1937, 45th Leg., p. 1279, ch. 478, reads as follows: "If for any reason any section or part of this Act shall be held by the Courts to be unconstitutional, or invalid, that fact shall not invalidate any other part of this Act, but the same shall be enforced without reference to the part or parts, if any, which shall be so held to be invalid, unless the entire Act shall be held to be invalid."

Section 18 repeals all conflicting laws and parts of laws. Section 19 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to correct malpractice in the building construction industry by safeguarding the public against the irresponsible practice of the profession of architecture; defining and regulating the practice of architecture; creating a Board of Architectural Examiners; providing for appointment of the Board; fixing the terms of office; providing for appointment of their successors and for filling vacancies; fixing the qualifications of the members of said Board; requiring each member to take the oath of office and file same with the Secretary of State; providing for the election of various officers of said Board; requiring the bonding of the Secretary-treasurer; providing for the adoption of necessary rules, regulations, and by-laws of said Board to govern its proceedings and activities; prescribing the duties of the various members of said Board; providing for fees collected by said Board to be deposited in a special Fund in the State Treasury; providing for an appropriation from said Fund to pay salaries, compensations, and other expenses of said Board; providing certain excess funds to be diverted to the General Revenue Fund of the State; providing salary of the Secretary-treasurer and certain compensation to other members of said Board;

providing for special meetings of said Board; requiring the adoption of rules and regulations by said Board for the examination and registration of applicants to practice architecture; fixing the fee therefor; providing for the issuance of certificates to applicants in certain cases without examination and fixing the fee therefor; setting forth who shall be a registered architect in copartnerships or firms; providing for the publishing by the Board, from time to time, of the list of approved schools; requiring every registered architect to have and use a seal on drawings and specifications; defining what persons are regarded as architects within the meaning of this Act; providing for the revocation and cancellation of registration certificates in certain cases; providing for the annual renewal of registration certificates issued under the provisions of this Act; providing for the reinstatement of registration certificates in certain cases; providing for the filing of a report of the proceedings of said Board in the office of the Secretary of State; providing penalties for pursuing the practice of architecture without having a registration certificate in accordance with this Act, or for violating the provisions of this Act; exempting practice of architecture by persons acting solely as officers or employees of the United States from the provisions of this Act; exempting from the provisions of this Act qualified architects residing outside this State, who have no office in this State, provided such architects, when performing architectural work in this State work with a registered architect of this State as a consultant, or act as a consultant to such an architect; providing for certain other things incidental to various portions of this Act; providing against any invalid part of this Act invalidating the remainder thereof or any part thereof; repealing all laws in conflict with this Act; and declaring an emergency. [Acts 1937, 45th Leg., p. 1279, ch. 478.]

**Art. 249b. Certificate of registration; persons entitled to receive without examination; fee; affidavit**

That any person of good moral character who, on May 22, 1937, was practicing architecture in the State of Texas, and had been so engaged in the practice of architecture for a period of at least six (6) months prior to May 22, 1937, and who shall present to the Board of Architectural Examiners of this State, an affidavit to that effect, shall be entitled to receive from said Board, without examination, a certificate

authorizing him or her to practice architecture in the State of Texas without examination, upon payment to the Secretary-Treasurer of the Board of a fee of Twenty-five (\$25.00) Dollars, and the Secretary-Treasurer of the Board shall, thereupon, issue a registration certificate as above required, to each such person having complied with the provisions of this Act; provided, however, that the Board may, in its discretion, require further evidence than the affidavit hereinabove provided for, that the applicant was actually engaged in the practice of architecture on May 22, 1937, and for six (6) months prior thereto. Such practicing architect shall be required to file his or her application for registration under this Act within thirty (30) days from the date upon which this Act goes into effect. Acts 1939, 46th Leg., p. 62, § 1.

Effective June 7, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that any person of good moral character who, on May 22, 1937, had been engaged in the practice of architecture in this State for a period of at least six (6) months prior to said date and who failed to obtain a registration certificate as provided for in Section

7 of Chapter 478, Acts of 1937, Forty-fifth Legislature, may have thirty (30) days from the date upon which this Act goes into effect in which to file with the Board of Architectural Examiners the affidavit and pay the fee of Twenty-five (\$25.00) Dollars in order to obtain a certificate authorizing such person to practice Architecture in the State of Texas, as provided in said Act, and further amending said Act; and declaring an emergency. Acts 1939, 46th Leg., p. 62.



## TITLE 14—ATTORNEYS AT LAW

Art.	Art.
306a. Attorneys who have practiced in other states and who have been licensed to practice before United States Supreme Court; member-	ship in legislature as equivalent of prelegal study [New]. 320a—1. State Bar Act [New].

**Art. 306a.** Attorneys who have practiced in other states and who have been licensed to practice before United States Supreme Court; membership in legislature as equivalent of prelegal study

Section 1. The Supreme Court by general order may exempt from taking any examination as to prelegal or legal studies and attainments any attorney at law who has been duly licensed to practice law in a State of the United States and has not been disbarred or had his license to practice law suspended in any State where applicant has heretofore practiced law in such State for a period of seven (7) years and has been duly licensed to practice law before the Supreme Court of the United States and has resided in the State of Texas for a period of twenty-four (24) months immediately before he is issued a license to practice law in this State, but such attorneys must in all instances furnish evidence as to moral character required of candidates to take the bar examinations in this State. The provisions of this section shall apply only to those States which give to persons licensed to practice law in Texas the same or similar reciprocal privileges.

Sec. 2. Membership in the Texas Legislature for twelve (12) consecutive years prior to making application to take the bar examination shall be considered equivalent to the prelegal study and training and study of the law required under Article 306, Revised Civil Statutes, 1925, as a prerequisite to taking the regular examination for license to practice law and may be substituted in lieu thereof, provided the applicant meets all requirements of the Supreme Court relative to moral character; and any person complying with the above is declared to be eligible to take such examination for license to practice law. In such cases thirty (30) days written notice of intention to take the bar examination, directed and delivered to the Clerk of the Supreme Court of Texas, shall be sufficient notice. Acts 1939, 46th Leg., p. 68.

Effective April 26, 1939.

Section 3 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing that the Supreme Court may grant certain attorneys who have practiced law in a State of the United States for a period of seven (7) years and who hold a license to practice law before the Supreme Court of the United States and who have resided in the State of Texas for a period of twenty-four (24) months, a license to practice law in the State of Texas without taking examination; providing that membership in the

Texas Legislature for twelve (12) consecutive years prior to making application to take the bar examination shall be equivalent to and may be substituted for the prelegal study and training and study of the law required as a prerequisite for the taking of the examination to practice law, provided such applicant meets the requirements as to moral character; declaring that those who comply with such provisions relative to membership in the Legislature and relative to moral character shall be eligible to take the examination for license to practice law; providing that thirty (30) days notice to the Supreme Court shall be sufficient notice; and declaring an emergency. Acts 1939, 46th Leg., p. 68.

**Art. 307. [Repealed by Acts 1935, 44th Leg., p. 438, ch. 176, § 1, effective July 1, 1937.]**

Section 2 of Acts 1935, 44th Leg., p. 438, ch. 176, as amended by Acts 1937, 45th Leg., p. 903, ch. 438, reads as follows:

"Section 2. This Act shall not go into effect until July 1, 1937, nor shall it be construed to apply to those students who were enrolled in approved law schools

within Article 307, Revised Civil Statutes of Texas, 1925, on October 1, 1934, provided such students graduate from the schools they were originally enrolled in on or prior to September 1, 1938."

Amendment of 1937, effective 90 days after May 22, 1937, date of adjournment.

**Art. 317. 332, 269, 234 Retention of client's money**

Fees for assisting in collecting assistance limited, see P.C. art. 1720a.

**Art. 320a—1. State Bar Act**

Section 1. This Act may be cited as the State Bar Act.

**Creation and general powers of State Bar**

Sec. 2. There is hereby created the State Bar, which is hereby constituted an administrative agency of the Judicial Department of the State, with power to contract with relation to its own affairs and which may sue and be sued and have such other powers as are reasonably necessary to carry out the purposes of this Act.

**Membership in State Bar; unlicensed persons prohibited from practicing; licensed persons**

Section 3. All persons who are now or who shall hereafter be licensed to practice law in this State shall constitute and be members of the State Bar, and shall be subject to the provisions hereof and the rules adopted by the Supreme Court of Texas; and all persons not members of the State Bar are hereby prohibited from practicing law in this State.

Within the meaning of this Section, all persons furnishing evidence of or complying with any of the following provisions shall be deemed as now licensed to practice law within this State, viz:

(a) That he is now enrolled as an attorney-at-law before the Supreme Court of this State.

(b) A license or the issuance of a license by the Board of Legal Examiners of this State authorizing him to practice law within this State.

(c) A license or the issuance of a license to practice law within this State by any authority, which, at the time of the issuance thereof, was authorized by the laws of this State, then in effect, to issue the license.

(d) Where an attorney, licensed before October 6, 1919, has lost or misplaced his license, issued by legal authority, and where the proof of its issuance is not available in the records of the Court in Texas in which he claims it was issued, then his status as a licensed attorney in this State may be established by a certificate of the District Judge in the District of his residence that such person has been engaged in the practice of law within this State for a period of five (5) years immediately and continuously next preceding the effective date of this Act, and, within the judgment of said District Judge, said attorney has theretofore been duly licensed to practice law under the laws of the State of Texas and is of good moral character. Before any such certificate shall be issued by a District Judge, the Judge shall give an opportunity to the President of the local Bar Association in the County of said Attorney's residence to be heard.

(e) Any proof satisfactory to the Supreme Court of this State that he is and was, upon the effective date of this Act authorized to practice law within this State. As amended Acts 1939, 46th Leg., p. 66, § 1.

Effective June 30, 1939.

Section 2 of the amendatory Act of 1939 read as follows: "Nothing in this Act shall give the District Judge or the Su-

preme Court the right to reinstate or to license any person who has been disbarred." Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

#### Rules and regulations; fees

Sec. 4. Within six (6) months from the effective date of this Act, and from time to time thereafter, as to the Court may seem proper, the Supreme Court of Texas shall prepare and propose rules and regulations for disciplining, suspending, and disbarring attorneys at law; for the conduct of the State Bar; and prescribing a code of ethics governing the professional conduct of attorneys at law. When the Court has prepared and proposed such rules and regulations, it shall submit by mail a copy of each such rule and regulation, as well as all such other rules and regulations as may have been proposed and filed with the Court, supported by petition signed by at least ten per cent (10%) of the registered members of the State Bar, in ballot form to each registered member of the State Bar for a vote thereon. At the end of thirty (30) days from the time such ballots are mailed, the Court shall count the ballots that have been returned, provided that no election shall be valid unless a minimum of fifty-one per cent (51%) of the members registered shall have voted at the election at which such rule or rules are adopted; and each and all of such rules and regulations that have received a majority of the votes cast shall be by said Court declared and adopted and shall be promulgated by said Court and shall become immediately effective. Such vote shall be open to inspection by any member of the Bar. No rule or regulation shall be promulgated that has not received a majority of votes cast in the manner above provided. Nothing herein shall be construed as authorizing the Court to prescribe fees to be charged for legal services rendered by any attorney.

The Supreme Court is further empowered and it shall be its duty to prescribe fees not exceeding Four Dollars (\$4) per annum per person to be paid to the Clerk of the Supreme Court to be held by him and expended by the Court or under its direction for the purpose of the administration of this Act. Any person licensed and registered may pay to the designated treasurer a sum of money from which the fees owed by such person may be taken from time to time as they become due.

#### Right of trial by jury not to be abrogated in disbarment proceedings

Sec. 5. The Supreme Court of Texas shall not adopt or promulgate any rule or regulation abrogating the right of trial by jury in disbarment proceedings, in the county of the residence of the defendant.

#### Venue; conviction in court prerequisite to suspension

Sec. 6. No disbarment proceeding shall be instituted against any attorney except in the district court located in the county of said attorney's residence, nor shall any attorney be suspended until such attorney has been convicted of the charge pending against him, in a court of competent jurisdiction in the county of such attorney's residence.

#### Partial invalidity

Sec. 7. If any sentence, paragraph or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other sentence, paragraph or section hereof, and the Legislature hereby expressly declares that it would have passed such remaining sentences,

paragraphs and sections despite such invalidity. Acts 1939, 46th Leg., p. 64.

Effective April 19, 1939.

Section 8 of the act of 1939 repeals all conflicting laws and parts of laws; section 9 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act creating a State Bar; constituting it an administrative agency of the Judicial Department of the State; defining the powers thereof; prescribing the membership thereof and prohibiting those not members from practicing law; empowering the Supreme Court to prepare, propose, adopt and promulgate rules and regulations for disciplining, suspending and disbarring attorneys at law and for the conduct of the State Bar, and prescribing a code of ethics governing the conduct of the members of the State Bar; providing for the submission of all such rules and regulations prepared and proposed by the Court, as well as all such other rules and regulations proposed and filed with the Court, supported by petition signed by at least ten per cent (10%) of the registered members of the State Bar, to each registered member thereof for a vote thereon; providing for the canvassing of the ballots returned and for declaring the results of such election and the promulgation of all such rules and regulations as have received a majority of the votes cast; providing that no election shall be valid unless

a minimum of fifty-one per cent (51%) of the members registered shall have voted in the election; providing that the vote shall be open to inspection by any member of the Bar, that no rule or regulation shall be promulgated that has not received a majority of the votes cast, and that the Court is not authorized to prescribe fees to be charged by attorneys for legal services; empowering the Court to prescribe fees not exceeding Four Dollars (\$4.00) per annum per person to be paid to the Clerk of the Court and to be expended by the Court or under its direction for the purpose of the administration of this Act and the method and manner by which such fees may be paid; providing that the Supreme Court shall not have the power to abrogate the right of trial by jury in disbarment proceedings, that disbarment proceedings shall be instituted in the district court of the county of residence of the defendant, and that no attorney shall be suspended until convicted of charges pending against him; providing that if any portion of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other portion thereof; providing that all laws or parts of laws in conflict with this Act or with the rules and regulations adopted under this Act by the Supreme Court are hereby repealed; and declaring an emergency. Acts 1939, 46th Leg., p. 64.

## TITLE 15—ATTORNEYS—DISTRICT AND COUNTY

### 1. DISTRICT ATTORNEYS

Art.

326k—8. Assistant district attorney for collection of delinquent taxes in counties of less than 25,000 [New].

Art.

326k—9. Criminal district attorneys in counties of 70,001 to 70,100 and 30,900 to 30,950 [New].

**Art. 326k—8. Assistant district attorney for collection of delinquent taxes in counties of less than 25,000**

In any county in this State having a population less than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census, and having a tax valuation exceeding Seventy-five Million Dollars (\$75,000,000), according to the last tax roll which has been approved as required by law, the District Attorney or Criminal District Attorney in said county is hereby authorized to appoint, in addition to the other assistants allowed by law, a Special Assistant District Attorney or Assistant Criminal District Attorney, whose powers and duties shall be the same as those of other Assistant District Attorneys or other Assistant Criminal District Attorneys, and in addition whose special duty shall be to assist said District Attorney or Criminal District Attorney in all civil matters arising in and connected with the efficient conduct of said office, including the investigation of all records, preparation of and filing of suits for the collection of all delinquent taxes of whatever kind or character due such county. Such Special Assistant District Attorney or Special Assistant Criminal District Attorney shall be paid the sum of Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in twelve (12) monthly installments, out of the General Fund of said county by warrant drawn upon such a Fund. Said salary shall be payable as herein provided when said District Attorney or Criminal District Attorney shall certify to the Judge of the County Court in such a county that any or all services enumerated herein have been performed and were necessary to the proper and efficient conduct of said office. Acts 1937, 45th Leg., p. 72, ch. 43, § 1.

Effective March 15, 1937.

**Title of Act:**

An Act providing that in counties in this State having a population less than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census, and a tax valuation exceeding Seventy-five Million Dollars (\$75,000,000), according to the last approved tax roll of said county, that the District Attorney or Criminal District Attorney in such a county is authorized to appoint a Special Assistant District Attorney or Special Assistant Criminal District Attorney; prescribing the powers and duties, both general and

special, of said Assistant District Attorneys or Assistant Criminal District Attorneys; providing the amounts to be paid the said Assistant District Attorneys or Assistant Criminal District Attorneys as salaries; providing that said Assistant District Attorneys or Assistant Criminal District Attorneys shall be paid by warrants drawn upon the General Fund of such a county on certificate made by said District Attorney or Criminal District Attorney to the County Judge thereof, and declaring an emergency. [Acts 1937, 45th Leg., p. 72, ch. 43.]

**Art. 326k—9. Criminal district attorneys in counties of 70,001 to 70,100 and 30,900 to 30,950**

Section 1. In those counties in this State having a population of not less than seventy-five thousand and one (75,001), and not more than seventy-seven thousand, one hundred (77,100) inhabitants, and not containing a city of more than forty thousand (40,000) inhabitants, as determined by the last preceding Federal Census, and in which counties there are one or more Judicial Districts, and in counties of this State having a population of not less than thirty thousand, nine hundred (30,-

900), and not more than thirty thousand, nine hundred and fifty (30,950) inhabitants, as determined by the last preceding Federal Census, and in which the County Attorney performs the duties of County Attorney and District Attorney, and in which there is not now a District Attorney, the office of Criminal District Attorney is hereby created, and shall exist from and after the passage of this Act. Such officer shall be known as Criminal District Attorney of such county. He shall possess all the qualifications and take the oath and give the bond required by the Constitution and Laws of this State for other District Attorneys. And it is further provided and directed that the person who is the present County Attorney of any such county shall continue in office and take the oath and give the bond required by the Constitution and Laws for other District Attorneys, and assume the duties and be known as the Criminal District Attorney of the county, and proceed to organize and arrange the affairs of the office of Criminal District Attorney of such county, and appoint assistants as provided in this Act. Provided further, that the present County Attorneys in such counties shall continue to hold the office created by this Act, for a period in no event less than the time such officer would have held his office as County Attorney had this Act not been passed. A Criminal District Attorney shall be elected in each such county at the General Election of the year immediately preceding the termination of the term of the Criminal District Attorney provided for such counties in this Act. Thereafter, a Criminal District Attorney in such counties shall be regularly elected as provided by law.

Sec. 2. The Criminal District Attorney of any such county shall have and exercise all such powers, duties, and privileges within such county as are by law now conferred, or which may hereafter be conferred upon District and County Attorneys, and such Criminal District Attorney shall act as and perform the duties of District Attorney for all Judicial Districts in such counties, and shall act as and perform the duties of County Attorney for all County Courts of such counties.

Sec. 3. The Criminal District Attorney in each county affected by this Act shall receive the same salary allowed other Criminal District Attorneys, as provided in Section 13 of Chapter 465,<sup>1</sup> Acts of the Forty-fourth Legislature, Second Called Session, or as may hereafter be provided by law.

Deputies, assistants, and clerks shall be hired by the Criminal District Attorney in such counties, and their compensation shall be fixed as provided by Subsection 4 of Section 14, Chapter 465,<sup>2</sup> Acts of the Forty-fourth Legislature, Second Called Session, or as may hereafter be provided by law.

Sec. 4. The provisions of Chapter 465<sup>3</sup> of the Acts of the Forty-fourth Legislature, Second Called Session, shall apply to and govern the offices of Criminal District Attorney created by this Act to the same extent and in the same manner that such Chapter would have applied had such offices been created prior to the passage of said Act.

Sec. 5. It is not the intention of this Act to create any office of District Attorney, nor any other Constitutional office, and the office of Criminal District Attorney is hereby declared to be a separate and distinct office from the Constitutional office of District Attorney, and no Criminal District Attorney shall draw or be entitled to any salary whatsoever from the State of Texas.

Sec. 6. This Act is not intended and shall not be considered or construed as repealing any law now in the Statute Books, except those in

conflict herewith, but shall be cumulative thereof. [Acts 1937, 45th Leg., p. 202, ch. 107.]

1 Article 3912e.

2 Article 3902.

3 Articles 3912e, 3896-3899, 3901, 3902.  
 Effective April 6, 1937.

Section 7 of this Act declared an emergency making the act effective on and after its passage.

**Title of act:**

An Act creating the office of Criminal District Attorney in all counties having a population of not less than seventy-five thousand and one (75,001) nor more than seventy-seven thousand, one hundred (77,100), and not containing a city of more than forty thousand (40,000) inhabitants, as determined by the last preceding Federal Census, and in which counties there are one or more Judicial Districts, and in counties of this State having a population of not less than thirty thousand, nine hundred (30,900), and not more than thirty thousand, nine hundred and fifty (30,950) inhabitants, as determined by the last preceding Federal Census, and in which the County Attorney performs the duties

of County Attorney and District Attorney, and in which there is not now a District Attorney; providing that the present County Attorney in those counties shall qualify as Criminal District Attorney, remaining in office for the period such officer would have held his office as County Attorney had this Act not been passed; providing that such officer shall take the oath and give the bond required of District Attorneys by the Constitution and Laws of this State; provided that such Criminal District Attorney shall have and exercise all powers, duties, and privileges within such county as are by law conferred, or which may hereafter be conferred upon District and County Attorneys, and providing the compensation for such officer; providing for the appointment of assistants, deputies, and clerks; fixing their powers, duties, and compensation; providing for the election of a Criminal District Attorney in each such county; providing this Act shall be cumulative of all other laws, and declaring an emergency. [Acts 1937, 45th Leg., p. 202, ch. 107.]

## TITLE 16—BANKS AND BANKING

## CHAPTER TWO—INCORPORATION

## Art. 380. Board to investigate

The Board shall carefully examine the articles of association and said Board shall inform itself as to the public necessity of the business of the community in which it is sought to establish the same, and to determine whether its capital is commensurate with the requirements of law, and the location of the business, and that the applicants are acting in good faith. As amended Acts 1937, 45th Leg., p. 459, ch. 233, § 3.

<sup>1</sup> The amendment of 1937 was to be effective only on adoption of amendment to Const. art. 16, § 16, as proposed by S.J.R. No. 9 of the 45th Legislature. The amendment was adopted at an election on Aug. 23, 1937. See note to art. 535.

## CHAPTER THREE—BANKS

## Art. 392. [376] Powers of corporation

Banking Corporations shall be authorized to conduct the business of receiving money on deposit, allowing interest thereon, and of buying and selling exchange, gold and silver coins of all kinds; of lending money upon real estate and personal property and upon collateral and personal securities at a rate of interest not exceeding that allowed by law; of buying and selling certificates, securities, and shares insured by the Federal Savings and Loan Insurance Corporation; and of buying, selling, and discounting negotiable and non-negotiable commercial paper of all kinds. No such bank shall lend more than fifty (50) per cent of its securities upon real estate, nor make a loan on real estate to an amount greater than half the reasonable cash value thereof; provided that the restrictions as to the amount a bank may invest in securities upon real estate and as to the value of such real estate as compared to the security of the loan shall not apply to mortgage loans which are insured by the Federal Housing Administrator. As amended, Acts 1937, 45th Leg., p. 1296, ch. 482, § 1.

Effective 90 days after May 22, 1937, date of adjournment.

Section 2 of the amendatory act of 1937

declared an emergency and provided that the act should take effect from and after its passage.

## CHAPTER FIVE—SAVINGS BANKS

## Art. 416. [403-432] Investment of savings

Such corporation shall invest not more than eighty-five (85) per cent of the total amount of its savings deposits in any of the following classes of securities, and not otherwise:

1. In bonds or interest bearing notes or obligations of the United States, or of those for which the faith of the United States is pledged for the payment of principal and interest;

2. In bonds, interest bearing notes, or other obligations issued under due authority of law, in payment for permanent improvements made, bearing a fixed rate of interest, and payable within a definite number of years, or over a series of years, of any city, county, town, or school district, or other subdivision of this State, now organized, or which may



hereafter be organized, and which is now or may hereafter be authorized to issue bonds under the Constitution and laws of this State, which has not defaulted in the payment of any part of either principal or interest thereof within five (5) years previous to making such investments;

3. In the bonds of this State, or of any State in the Union, that has not, within the last five (5) years previous to making such investment, defaulted in the payment of any part of either principal or interest thereof;

4. In first mortgage bonds of any steam or electric railroad, or other public utility corporation, domiciled in this or any other State of the Union, the annual net earnings of which steam or electric railroad, or public utility corporation, equaled during the last five (5) years twice the annual interest charges on the entire funded indebtedness of such steam or electric railroad or public utility corporation. Provided that not more than twenty-five (25) per cent of said savings deposits may be invested in the securities mentioned in this Subdivision;

5. In bonds or notes secured by first mortgage, first deed of trust, or other first lien on improved real estate in Texas, provided the aggregate of such bonds or notes outstanding and secured by coordinate lien against said property shall not exceed fifty (50) per cent of the value of said real estate and the improvements thereon, exclusive of mineral leases or other mineral estate, such bonds or notes to run for a term of not longer than ten (10) years, and to be always accompanied by a complete abstract of title to the property mortgaged, and an attorney's certificate approving the title or a title insurance policy in some company incorporated under the laws of Texas guaranteeing the title and guaranteeing that said bonds or notes retain a first lien on the land mortgaged; and in addition thereto in assignable certificates issued by any city, town, or village for street paving, the payments of which are secured by first liens, fixed or executed on the abutting properties in accordance with law, and made the personal obligations of the abutting property owners; provided that the restrictions contained in this Section shall not apply to loans insured by the Federal Housing Administrator;

6. In bankers acceptances as defined by the Federal Reserve Act or in collateral loans, which loans are collateralized and secured by marketable stocks or bonds, the market value of which shall be at all times equal to one hundred and twenty-five (125) per cent of the amount of the loan, such collateral loans always having a maturity of not longer than six months from the date of the purchase thereof. Provided that not more than twenty-five (25) per cent of such savings deposits may be invested in the class of securities mentioned in this Subdivision;

7. In notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator.

It shall be the duty of the Directors of such corporation as soon as practicable, to invest the moneys and funds of such savings accounts, by purchase or otherwise, in the securities hereinabove described. Such Directors, from time to time, shall sell and invest the proceeds of such investments, and for the purpose of meeting current demands and expenses in excess of the receipts, any of the securities may be sold or pledged. As amended Acts 1937, 45th Leg., p. 420, ch. 215, § 1.

Amendment of 1937, effective April 26, 1937.

Section 2 of the amendatory act of 1937 declared an emergency making the act effective on and after its passage.

## CHAPTER SEVEN—BANK DEPOSIT GUARANTY LAW

## BOND SECURITY SYSTEM

Art.

489c. Liquidation of Bank Deposit Insurance Company; appeal [New].

## GUARANTY FUND PLAN

Art. 455. Repealed by Acts 1937, 45th Leg., p. 459, ch. 233, § 2. See note.

Repeal was to be effective only on adoption of amendment to Const. art. 16, § 16, as proposed by S.J.R. No. 9 of the 45th Legislature. The amendment was adopted at an election on Aug. 23, 1937. See note to art. 535.

## BOND SECURITY SYSTEM

Art. 489a. Repealed by Acts 1937, 45th Leg., p. 370, ch. 180, § 1

Effective April 23, 1937.

Art. 489c. Liquidation of Bank Deposit Insurance Company; appeal

Sec. 2. After the effective date of this Act, the affairs of the Bank Deposit Insurance Company shall be liquidated by the Banking Commissioner of Texas, its debts shall be paid and its remaining assets shall be distributed to those persons lawfully entitled thereto, in accordance with the terms and provisions of said House Bill No. 51,<sup>1</sup> as nearly as may be practicable, aided by the principles and usages of equity when necessary. A complete statement of the plan of such liquidation shall be filed by the Banking Commissioner with a District Court of Travis County, accompanied by the recommendation or prayer of the Commissioner.

Upon the approval of such plan by the Court, if in session, or the Judge thereof, if in vacation, such approval to be entered in the minutes of the Court, notice of such order shall be published by the Clerk of such Court in such manner and for such time as the Court or Judge thereof may order, naming a time when the Court will hear objections thereto. Any person aggrieved by such proposed plan may object thereto in writing, filed within the time allowed by the order of the Court or Judge, and the issue or issues made by such person or persons shall be heard and determined by the Court as an ordinary civil cause, and an appeal or writ of error from the judgment rendered thereon shall lie as in other civil cases.

Sec. 3. Any appeal in such proceeding, when perfected, shall operate as a stay of execution of the judgment and no disbursement of the funds of such company shall be made by the Commissioner until the cause shall have been finally disposed of. Provided all necessary fees, expenses and costs incurred by the Commissioner in the proceeding may be paid by him from such funds at any time, upon the order of the Court or Judge thereof. Acts 1937, 45th Leg., p. 370, ch. 180.

<sup>1</sup> Article 489a.

Effective April 20, 1937.

Section 4 of this Act declared an emer-

gency, making the act effective on and after its passage.

## CHAPTER EIGHT—GENERAL PROVISIONS

## Art. 492. State control; depositories of public funds of State and municipalities

All corporations created under this title are hereby declared to be charged with the public use, and shall be under State control and be subject to such legislation as the Legislature may enact for the government and regulation of such banking institutions in this State. Such corporations shall be deemed to be instrumentalities and agencies of the State Government and shall be charged with the duty, when lawfully designated thereto, to act as depositories for the public funds of this State, and of any County, Municipality, City, Town or Village or of any political subdivision within the State, in accordance with the laws of this State governing depositories of public funds now existing or hereafter to exist; and such corporations shall be further charged with the duty to act as fiscal agent for the State, or any County, City, Town or Village, or any subdivision within this State upon request so to do and upon reasonable compensation therefor. The rights, privileges and powers conferred by the terms of this title to corporations taking advantage thereof or incorporating hereunder are to be held subject to the right of the Legislature, to amend, alter or reform the same. Every corporation operating a banking business in Texas under a charter authorized by this State prior to the adoption of the Constitution of 1876, shall be subject to all the provisions of this title. As amended Acts 1937, 45th Leg., p. 409, ch. 205, § 1.

Effective April 26, 1937.

Section 2 of Act 1937, 45th Leg., p. 409, ch. 205, repeals all conflicting laws and

parts of laws and section 3 declares an emergency making the act effective on and after its passage.

## Art. 498. 574 Bonds of officers

All active or salaried officers and employees of state banking institutions whose duties permit or require the handling of any of the funds of the bank shall, before entering upon the discharge of their duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such institution, conditioned for the faithful performance of their duties and such pecuniary loss as the bank may sustain for money or other valuable securities embezzled, wrongfully abstracted or willfully misapplied by any such officer or employee in the course of his employment as such or in the course of his employment in any other position in such bank, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position; provided that said bonds shall be made by a surety company having a permit to do business in Texas. The amount of such bond and the solvency of the sureties shall be subject to the approval of the Banking Commissioner, and such bonds shall be upon forms prepared by the Commissioner. All such bonds shall immediately after their execution be forwarded to the Commissioner and be filed by him as an archive in his office and a certified copy thereof shall be returned to the board of directors of such bank and be kept in their custody. The board of directors may require any other bond or bonds in addition to that herein required, at their discretion. Officers of banks who do not handle banks' money or draw a salary, shall not be required to give bond. Provided, such bond shall not be required of any officer or employee of any state banking institution which carries fidelity insurance upon such officer or employee in an amount and upon conditions approved

by the Banking Commissioner. As amended Acts 1939, 46th Leg., p. 71, § 1.

Effective May 15, 1939.  
Section 2 of the amendatory Act of 1939 repeals all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 535. [552] Transfer of shares of stock on corporation book<sup>1</sup>

Shares of stock in any bank, savings bank or bank and trust company organized under the laws of the State of Texas shall be transferable only on the books of the corporation, and it shall be the duty of the officers of the corporation to make such transfer upon the books at the request of the transferor or transferee. As amended Acts 1937, 45th Leg., p. 459, ch. 233, § 1.

<sup>1</sup> The amendment of 1937 was to be effective only on adoption of amendment to Const. art. 16, § 16, as proposed by S.J.R. No. 9 of the 45th Legislature. The amendment was adopted at an election on Aug. 23, 1937.

Section 4 of the amendatory Act of 1937 provides: "This Act of amendments of Articles 535 and 380 and of repeal of Article 455 insofar as they affect the liability of shareholders in corporations having banking or discount privileges, shall be entirely prospective, in effect and shall not apply to any such corporate body as may have ceased to transact its regular

corporate business prior to the effective date hereof, but as to such corporation the rights of its creditors and the liability of its shareholders are saved from this Act, and shall be governed by the law as it existed at the time of such closing."

Section 5 makes the act effective on adoption of constitutional amendment, section 6 provides that if any section or paragraph is declared invalid, such invalidity shall not affect the remainder of the act and section 7 declared an emergency, but the vote thereon was not recorded.

### CHAPTER NINE—MORRIS PLAN BANKS

Art.

548a. Adoption by corporations of powers granted [New].

#### Art. 545. Powers

2. To receive money on time deposits, and to purchase, sell, discount, or negotiate bonds, notes, certificates of investment and choses in action for the payment of money at a time either fixed or uncertain, and to receive payments therefor in installments or otherwise, with or without an allowance of interest upon such installments. To purchase stock in Federal Deposit Insurance Corporation. As amended Acts 1939, 46th Leg., p. 72, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1939, added a new article 548a; section 3 repeals

all conflicting laws and parts of laws; section 4 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 548a. Adoption by corporations of powers granted

All corporations now chartered under the provisions of this chapter may adopt the powers herein granted by filing a certificate to such effect with the Commission of Banking, provided however, that the incorporation of corporations in the future under this chapter shall make application to the State Banking Board and be governed by the provisions of Chapter 2 of this Title. Added Acts 1939, 46th Leg., p. 72, § 2.

Effective 90 days after June 21, 1939, date of adjournment.

Section 1 of Act of 1939 amends article 545, § 2. For sections 3 and 4 of this Act see note under article 545.

## TITLE 19A—THE SECURITIES ACT [New]

### Art. 600a. The Securities Act

#### [Fees]

Sec. 35. The Secretary of State shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

(a) For the filing of any original or renewal application of a dealer, Twenty-five (\$25.00) Dollars.

(b) For each and every registration certificate issued to a dealer, whether on an original or renewal application, Ten (\$10.00) Dollars.

(c) For the filing of any original or renewal application for each salesman, Ten (\$10.00) Dollars.

(d) For each and every registration certificate issued to each salesman, Five (\$5.00) Dollars.

(e) For each and every registration certificate issued to a dealer or salesman after the first day of July of any year, one-half of the fee provided in subsections (b) and (d) herein, whichever is applicable.

(f) For the filing of any original or renewal application of an issuer to sell or dispose of stock, Five (\$5.00) Dollars.

(g) For each and every permit issued to an issuer, a fee of one-tenth of one per centum of the aggregate par value of the securities to be sold in this State. In case of stock having no par value, the price at which such stock is to be offered to the public shall be deemed to be the par value of such stock.

(h) For each and every renewal permit issued to an issuer, Five (\$5.00) Dollars.

(i) For copies of any papers filed in the office of the Secretary of State, or for the certification thereof, the Secretary of State shall charge such fees as the Secretary of State is now authorized to charge in similar cases.

(j) For the filing of any original or renewal application of a dealer of any instrument representing any interest in or under an oil, gas, or mining lease, fee, or title, a fee of Twelve (\$12.00) Dollars.

(k) For each and every registration certificate issued to a dealer under the terms of subsection (i) shall pay a fee of Five (\$5.00) Dollars. As amended Acts 1937, 45th Leg., p. 811, ch. 401, § 1.

Amendatory act of 1937, effective May 23, 1937. declared an emergency and provided that the act should take effect from and after

Section 3 of the amendatory act of 1937 its passage.

#### [Fees paid to State Treasurer; use for administration of act]

Sec. 36. Upon and after the effective date of this Act, all moneys derived from fees, assessments or charges under this Act shall be paid by the Secretary of State into the State Treasury for safekeeping, and shall, by the State Treasurer, be placed in a separate fund to be available for the use of the Secretary of State in the administration of this Act upon requisition of the Secretary of State. All such moneys so paid into the State Treasury are hereby specifically appropriated to the Secretary of State for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Secretary of State may occupy, and necessary traveling expenses of the Secretary of State and the Attorney General or persons authorized to act for either when performing

duties hereunder at the request of the Secretary of State. Provided, however, in no event shall the expenditure for the administration of this Act exceed Sixty-five Thousand Dollars (\$65,000) for any one fiscal year.

It is further provided that the compensation of all persons employed for the administration of this Act shall be in line with salaries paid other State officials and employees holding similar positions, and doing similar work; and, after August 31, 1937, all expenditures for the administration of this Act shall be in the amounts and for the purposes fixed by the Legislature in the General Appropriation Bill.

At the end of the fiscal year any unused portion of said funds in said special account shall be set over and paid into the General Revenue Fund.

The Comptroller shall, upon requisition of the Secretary of State, from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition, not exceeding, however, the amount in such fund at the time of making of any requisition therefor. As amended Acts 1937, 45th Leg., p. 811, ch. 401, § 2; Acts 1939, 46th Leg., p. 615, § 1.

Effective July 10, 1939.

Section 2 of amendatory Act of 1939 declared an emergency and provided that the

Act should take effect from and after its passage.

## TITLE 20—BOARD OF CONTROL

Chap.

8. Division of Public Welfare [New].

### CHAPTER ONE—GENERAL PROVISIONS

#### Art. 604. New Divisions

Texas Old Age Assistance Commission, State Board of Control as constituting, see article 6243—4, post.

### CHAPTER SEVEN A—DIVISION OF CHILD WELFARE

#### Art. 695a. Creation of Child Welfare Division; Chief of division; appointment and salary; assistants and salaries

Rights, powers, and duties of Child Welfare Division continued and transferred to State Department of Public Welfare, see art. 695c, § 9, post.

### CHAPTER EIGHT—DIVISION OF PUBLIC WELFARE [NEW]

Art.

695b. Repealed.

695c. Public Welfare Act of 1939—Definitions.

#### Art. 695b. Repealed. Acts 1939, 46th Leg., p. 544, § 47. Effective Sept. 1, 1939

Article was derived from Acts 1937, 45th Leg., p. 880, ch. 435, and related to Division of Public Welfare.

Fees for assisting in collecting assistance limited, see P.C. art. 1720a.

Soliciting dues for purpose of collecting, advertising or sponsoring pensions or benefits prohibited, see P.C. art. 1720a.

#### Art. 695c. Public Welfare Act of 1939—Definitions

Section 1. As used in this Act:

- a. The term "State Board" means the State Board of Public Welfare.
- b. The term "State Department" means the State Department of Public Welfare.
- c. The term "Executive Director" means Executive Director of the State Department of Public Welfare.
- d. The term "Public Welfare" means and includes all forms of public assistance and specific services provided for in this Act.
- e. The term "Dependent Child" means a needy child under the age of fourteen (14) years, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and whose relatives liable under the law for his support are not able to provide adequate care or support for such child without public assistance, and who is living with his father, adoptive father, mother, adoptive mother, grandfather, grandfather-in-law, great-grandfather, grandmother, grandmother-in-law, great-grandmother, step-father, step-mother (but not their parents), brother, brother of the half-blood, brother-in-law, adoptive brother, sister, sister of the half-blood, sister-in-law, adoptive sister, step-brother, step-sister, uncle and aunt of the whole or half-blood, uncle-in-law, aunt-in-law, great-uncle, or great-aunt in a place maintained by one or more of such relatives as his or her home.
- f. The term "Child Welfare Services" means services for children provided for in this Act.

**Department of Public Welfare created; Board of Public Welfare**

Sec. 2. a. There is hereby created a State Department of Public Welfare which shall consist of a State Board of Public Welfare, an Executive Director, and such other officers and employees as may be required to efficiently carry out the purposes of this Act. The State Board of Public Welfare shall be composed of three (3) members to be appointed by the Governor of the State of Texas with the advice and consent of the Senate on the basis of demonstrated interest in, and knowledge of, public welfare and who have had experience as an executive or administrator in an enterprise of comparable size; the term of one member to expire January 20, 1941, the term of one member to expire January 20, 1943, and the term of one member to expire January 20, 1945. The Governor shall designate which appointee he desires to fill each term and shall make such appointment immediately after the effective date of this Act. Vacancies shall be filled for any unexpired term by appointment by the Governor with the advice and consent of the Senate. On January 20, 1941, and biennially thereafter, one member of said Board shall be appointed for a full term of six (6) years, and each member of said Board shall hold office until his successor has been appointed and has qualified by taking the oath of office and giving bond as hereinafter prescribed. The State Board of Public Welfare shall have its office in Austin, Texas, in such building as shall be designated and approved by the State Board of Control.

b. The members of the State Board of Public Welfare shall be public officers and as such shall take the oath of office required by the Constitution of Texas, and each member shall give bond in form prescribed by the Attorney General in the sum of Thirty Thousand (\$30,000.00) Dollars payable to and to be approved by the Governor and conditioned for the faithful performance of his duties. The premium on such bonds shall be paid out of the funds appropriated for operating expenses of the State Department and any recovery on such bonds shall inure to the benefit of such funds maintained by the State Treasury for the benefit of the State Department of Public Welfare as hereinafter are designated and created.

c. At the first meeting of the members of said Board, after their appointment, and biennially thereafter upon the appointment of a new member thereof, one of the members thereof shall be elected Chairman to preside over all meetings of such Board, and two (2) members thereof shall constitute a quorum for the transaction of business.

d. The members of the State Board of Public Welfare shall receive their actual expenses while engaged in the performance of their duties and a per diem of Ten (\$10.00) Dollars per day for not exceeding sixty (60) days for any fiscal year.

**Executive Director of Board; Appointment; Salary**

Sec. 3. a. The Board shall select and appoint, with the advice and consent of two-thirds ( $\frac{2}{3}$ ) of the membership of the Senate, an Executive Director of the Department of Public Welfare, who shall be the executive and administrative officer of the State Department and shall discharge all administrative and executive functions of the State Department. Such person so selected and appointed shall be not less than thirty-five (35) years of age at the date of his appointment, and shall have been a resident citizen of the State of Texas for at least ten (10) years preceding the date of his appointment, and shall not have been an occupant of any elective State office at the time of his appointment, nor have occupied any elective State office during the six (6) months next preceding the date of his said appointment. He shall be a person of demonstrated



executive ability and extensive experience in public welfare administration, and shall have had experience as an executive or administrator in an enterprise of comparable size. He shall serve at the pleasure of the Board and shall be paid an annual salary of not to exceed Five Thousand (\$5,000.00) Dollars payable in equal monthly installments.

b. The Board shall be responsible for the adoption of all policies, rules, and regulations for the government of the State Department of Public Welfare.

c. The Board, its agents, representatives and employees shall constitute the State Department of Public Welfare and whenever, by any of the provisions of this Act, or of any other Act, any right, power or duty is imposed or conferred on the State Department of Public Welfare, the right, power or duty so imposed or conferred shall be possessed and exercised by the Executive Director unless any such right, power or duty is specifically delegated to the duly appointed agents or employees of such department, or any of them by this Act or by an appropriate rule, regulation or order of the State Board.

#### **Powers and duties of Executive Director**

Sec. 4. The Executive Director shall be the executive and administrative officer of the State Department. The Executive Director, with the consent and approval of a majority of the members of the Board shall:

- a. Classify all positions in the administration of this Act;
- b. Fix objective standards for all positions included in the classifications;
- c. Formulate salary schedules for the services so classified, subject to biennial appropriations;
- d. Provide for a fair and impartial selection, appointment, retention and promotion of personnel in accordance with the classification and compensation plans therein before provided.

#### **Powers and duties of Department**

Sec. 5. The State Department shall be charged with the administration of the welfare activities of the State as hereinafter provided. The State Department shall:

- a. Administer aid to needy dependent children, assistance to needy blind, and administer or supervise general relief;
- b. Administer or supervise all child welfare service, except as otherwise provided for;
- c. Administer assistance to the needy aged;
- d. Cooperate with the Federal Social Security Board, created under Title 7 of the Social Security Act enacted by the Seventy-fourth Congress and approved August 14, 1935,<sup>1</sup> and any amendment thereto, and with any other agency of the Federal Government in any reasonable manner which may be necessary to qualify for Federal Aid for assistance to persons who are entitled to assistance under the provisions of that Act, and in conformity with the provisions of this Act, including the making of such reports, in such forms and containing such information as the Federal Social Security Board or any other proper agency of the Federal Government may, from time to time, require, and comply with such requirements as such Board or agency may, from time to time, find necessary to assure the correctness and verifications of such reports;
- e. Assist other departments, agencies, and institutions of the local, State and Federal Governments, when so requested and cooperate with such agencies when expedient, in performing services in conformity with the purposes of this Act.

f. Fix the fees to be paid to ophthalmologists or physicians skilled in treatment of diseases of the eye for the examination of applicants for, and recipients of, assistance as needy blind persons, as herein provided in Section 15 of this Act.

g. Establish and provide such method of local administration as is deemed advisable; and provide such personnel as may be found necessary for carrying out in an economical way the administration of this Act; provided, however, that all employees of the Department shall have been residents of the State of Texas for a period of at least four (4) years preceding their appointment. To serve in an advisory capacity to such local administrative units as may be established, there may be also established local advisory boards of Public Welfare, which boards shall be of such size, membership, and experience as may be determined by the Executive Director of the Department of Welfare to be essential for the accomplishment of the purposes of this Act.

h. Carry on research and compile statistics relative to the entire public welfare program throughout the State, including all phases of dependency, delinquency, and related problems, and develop plans in cooperation with other public and private agencies for the prevention as well as treatment of conditions giving rise to public welfare problems.

143 U.S.C.A. §§ 901-904.

#### Divisions in Department

Sec. 6. There shall be created in the State Department of Public Welfare the following Divisions:

a. A Division of Public Assistance;

b. A Division of Child Welfare;

c. A Division of Research and Statistics, and such other Divisions as the Executive Director may find necessary for effective administration. The Executive Director shall have the power to allocate and re-allocate functions among the Divisions within the Department and have the power and authority, subject to classification, to select, appoint, and discharge such assistants, clerks, stenographers, auditors, bookkeepers, and clerical assistants as may be necessary in the administration of the duties imposed upon the State Department of Public Welfare within the limits of the appropriations that may be made for the work of said Department; salaries of all such employees to be fixed by the Executive Director in keeping with salaries paid other State employees performing like work and holding similar positions.

#### Budget

Sec. 7. The Executive Director shall prepare and submit to the Board, for its approval, a biennial budget of all funds necessary to be appropriated by the Legislature for the State Department for the purposes of this Act, including in such budget an estimate of all Federal funds which may be allotted to this State by the Federal Government for the purposes of the State Department. The budget so prepared shall by the Board be submitted to and filed with the Board of Control in the form and manner and within the time prescribed by law.

#### Annual Report

Sec. 8. The Executive Director shall prepare annually a full report of the operation and administration of the Department, together with such recommendations and suggestions as he may deem advisable, and such reports shall be submitted to the Board not later than the first day of October of each year. The Board, in turn, shall submit a report to the Governor and the Legislature.

Sec. 9. a. All of the rights, powers, and duties heretofore conferred by law on the Division of Child Welfare of the Board of Control, when not otherwise in conflict with any of the provisions of this Act, are hereby continued in full force and effect, and are hereby transferred to, and conferred upon, the State Department of Public Welfare as created by this Act, and shall be held, exercised, and performed by the State Department under the provisions of this Act and the several Acts now in force, and any amendment or amendments thereto which might be made. To effectuate this purpose the Division of Child Welfare, records, and physical properties are transferred to the State Department and placed under its supervision, and the Division of Child Welfare of the State Board of Control is hereby abolished.

b. All of the rights, powers, and duties heretofore conferred by law upon the Texas Relief Commission, not otherwise in conflict with any of the provisions of this Act, are hereby continued in full force and effect, and are hereby transferred to, and conferred upon, the State Department of Public Welfare as created by this Act, and shall be held, exercised, and performed by the State Department under the provisions of this Act, and the several Acts now in force, and any amendment or amendments thereto which might be made. To effectuate this purpose, the records, and physical properties of the Texas Relief Commission are transferred to the State Department of Public Welfare and placed under its supervision, and the Texas Relief Commission, as referred to in Chapter 30, of the Acts of 1935,<sup>1</sup> is hereby abolished.

c. All of the rights, powers, and duties heretofore conferred by law upon the Texas Old Age Assistance Commission, when not otherwise in conflict with any of the provisions of this Act, are hereby continued in full force and effect, and are hereby transferred to, and conferred upon the State Department of Public Welfare as created by this Act, and shall be held, exercised, and performed by the State Department under the provisions of this Act, and the several Acts now in force, and any amendment or amendments thereto which might be made. To effectuate this purpose, the records and physical properties are hereby transferred to the State Department and placed under its supervision, and the Texas Old Age Assistance Commission is hereby abolished.

d. Provided, that no provision of this Act shall in any manner interfere with the powers and functions of the Vocational Rehabilitation Division of the Department of Education, the State Commission for the Blind, or the Division of Maternal and Child Health of the State Health Department, or the Juvenile Boards of any of the counties authorized by Title 82, Revised Civil Statutes as amended.<sup>2</sup>

<sup>1</sup> Article 842e, Penal Code, art. 107f.

<sup>2</sup> Articles 5119 et seq.

**Department as agency of State**

Sec. 10. The State Department of Welfare is hereby designated as the State agency to cooperate with the Federal Government in the administration of the provisions of Title I,<sup>1</sup> Title IV,<sup>2</sup> Part 3 of Title V,<sup>3</sup> and Title X,<sup>4</sup> of the Federal "Social Security Act" and of the provisions of such other Titles of the Federal "Social Security Act" as may be added thereto from time to time, in the event no other State agency is by law designated to cooperate with the Federal Government in the administration of the provisions of such Title, or Titles as may be added to the "Social Security Act" and the Department is directed to enact and promulgate such rules and regulations as may be necessary to effect the cooperation as herein outlined and designated.

The State Department of Welfare is hereby authorized and directed to cooperate with the proper departments of the Federal Government and with all other departments of the State and local governments in the enforcement and administration of such provisions of the Federal "Social Security Act," and any amendments thereto and the rules and regulations issued thereunder, and in compliance therewith, in the manner prescribed in this Act or as otherwise provided by law.

1 42 U.S.C.A. §§ 301-306.

3 42 U.S.C.A. § 721.

2 42 U.S.C.A. §§ 601-606.

4 42 U.S.C.A. §§ 1201-1206.

**State treasurer, custodian of funds; disbursements, how made**

Sec. 11. a. The State Treasurer is hereby designated as the custodian of any and all money which may be received by the State of Texas (which the State Department of Public Welfare is authorized to administer), from any appropriations made by the Congress of the United States for the purpose of cooperating with the several States in the enforcement and administration of the several provisions of the Federal "Social Security Act,"<sup>1</sup> and all money received from any other source; and the State Treasurer is hereby authorized to receive such money, pay it into the proper fund or the proper account of the General Fund of the State Treasury, provide for the proper custody thereof and to make disbursements therefrom upon the order of the State Department and upon warrant of the State Comptroller of Public Accounts.

b. For the purpose of carrying out the provisions of this Act, all monies in the Texas Old Age Assistance Fund, created by House Bill No. 26, Acts of the Second Called Session of the Forty-fourth Legislature, as amended by House Bill No. 8, Chapter 495, Acts of the Third Called Session of the Forty-fourth Legislature shall be transferred to the State Department of Public Welfare Fund as created by this Act, provided same shall be expended only for the purpose of carrying out the provisions of House Bill No. 8, Chapter 495, Acts of the Third Called Session of the Forty-fourth Legislature, and any amendments thereto.<sup>2</sup> All monies that have heretofore, or may be, allocated, for the purpose of carrying out the provisions of House Bill No. 8, Chapter 495, Acts of the Third Called Session of the Forty-fourth Legislature, to the Texas Old Age Assistance Fund shall, from the effective date of this Act, be allocated to and placed in the State Department of Public Welfare Fund to be used for the purposes for which they were created or appropriated.

1 42 U.S.C.A. §§ 301-1305.

in Vernon's Annotated Texas Statutes, see

2 For distribution of sections of this Act Tables.

**Blind persons, assistance to**

Sec. 12. Assistance shall be given under the provisions of this Act to any needy blind person who:

- a. is over the age of twenty-one (21) years; and
- b. whose vision, with correctional glasses, is insufficient for use in an occupation for which sight is essential; and
- c. who has resided in this State for five (5) years during the nine (9) years immediately preceding the date of application, and who has resided in this State continuously for one year immediately preceding the date of application; and
- d. is not at the time of receiving such aid an inmate of any public or private home for the aged; or of any institution supported wholly or in part by Federal, State, County or City funds, or any public or private institution of a custodial, correctional, or curative character; provided, however, that aid may be granted to persons temporarily confined in private institutions for medical or surgical care; and

e. who is not publicly soliciting alms in any part of this State. The term "publicly soliciting" shall be construed to mean the wearing, carrying, or exhibiting the signs denoting blindness, or the carrying of receptacles for the reception of alms, or the doing of the same by proxy, or by begging from house to house or on any public street, road, or thoroughfare within the State; and

f. who has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health; and

g. who is a citizen of the United States.

#### **Blind persons, exceptions**

Sec. 13. No aid to needy blind persons shall be given under the provisions of this Act to any individual for any period with respect to which he is receiving aid under the Old Age Assistance Act of the State of Texas.<sup>1</sup>

<sup>1</sup> Articles 6243—1 to 6243—23.

#### **Blind persons, amount of assistance**

Sec. 14. The amount of assistance which shall be granted to any needy blind person shall be determined by the State Department through its district or county agencies in the county or district in which the needy blind person resides, with due regard to the resources and necessary expenditures of such needy blind person, and the conditions existing in each case, and in accordance with the rules and regulations made by the State Department. In no case shall the amount of assistance granted to any needy blind person exceed the sum of Fifteen (\$15.00) Dollars per month, and, in addition thereto, such funds as the Federal Government may appropriate and allocate to the State of Texas from time to time shall be distributed among the recipients of assistance in like manner as State funds are paid under the terms of this Act; provided that in no case shall such assistance be in an amount which, when added to the income of the applicant from all other sources, including income from property and from State and Federal Government, shall exceed a total of Thirty (\$30.00) Dollars per month; provided that the assistance granted herein shall be granted in such amount as will provide reasonable subsistence not incompatible with good health and decency, and provided further that assistance which may be received from some other source, for the purpose of providing surgical operation or medical treatment for the purpose of benefiting or removing the applicant's visual disability, when such operation or treatment is recommended by a qualified ophthalmologist or physician skilled in treatment of diseases of the eye shall not be considered as income available to the applicant for subsistence.

#### **Blind assistance, application for**

Sec. 15. No application for assistance as a needy blind person shall be approved until the applicant shall have been examined by an ophthalmologist or physician skilled in treatment of diseases of the eye and who is licensed to practice medicine in Texas, and who has been approved by the State Department to make such examination. The examining ophthalmologist or physician shall certify, in writing upon forms prescribed by the State Department as to the cause, diagnosis, and prognosis, and shall make recommendations as to the medical and surgical treatment. The State Department shall adopt a reasonable fee schedule for such examinations. Such fees shall be paid out of the funds appropriated to the State Department for the purpose of assistance to needy blind persons under the provisions of this Act or for administrative expense.

**Blind assistance, not transferable**

Sec. 16. No assistance given to any needy blind person under the provisions of this Act shall be transferable or assignable, at law or in equity, and none of the money paid or payable under the provisions of this Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any insolvency law.

**Blind assistance, to be reconsidered**

Sec. 17. All assistance granted under the provisions of this Act to any needy blind person shall be reconsidered as frequently as may be required by the rules of the State Department. After such further investigation as the State Department may deem necessary or may require, the amount of assistance may be changed, or the assistance may be entirely withdrawn if the State Department finds that the recipient's circumstances have altered sufficiently to warrant such action. The State Department may at any time cancel and revoke assistance or it may suspend assistance for such period as it may deem proper, upon the ground of ineligibility of the recipient under the provisions of this Act. Whenever assistance is thus withdrawn, revoked, suspended, or in any way changed, the State Department shall at once notify the recipient of such decision.

**Blind assistance, re-examination of eyes**

Sec. 18. Every recipient of assistance as a needy blind person shall submit to a re-examination of his eyesight at least once every two (2) years, unless excused therefrom by the State Department. He shall also furnish any reasonable information required by the State Department.

**Blind assistance, may be denied, when**

Sec. 19. Assistance under the provisions of this Act, at the discretion of the State Department, may be denied or withdrawn from any needy blind person who refuses medical, surgical, or other treatment, when his eyesight may be partially or wholly restored by such treatment and a certificate in writing to that effect is made by the examining ophthalmologist or physician skilled in the treatment of diseases of the eye. Any person who is denied assistance upon this ground shall be granted an opportunity for a fair hearing as herein provided. The State Department may appoint regular practicing physicians to examine the needy blind as to their physical condition, and appoint ophthalmologists or physicians skilled in treatment of diseases of the eye, to examine applicants as to the condition of their eyes.

**Blind assistance, rules and regulations**

Sec. 20. The State Department shall promulgate such rules and regulations stating in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this Act.

**Citizenship requirements**

Sec. 21. Assistance may be given under the provisions of this Act with respect to any needy dependent child who:

- a. Is a citizen of the United States;
- b. Has resided in this State for a period of at least one (1) year immediately preceding the date of the application for such assistance; or was born within the State within one year immediately preceding the date of application, and whose mother has resided in the State for a period of at least one (1) year immediately preceding the birth of such child.

**Dependent children, amount of assistance**

Sec. 22. The amount of assistance which shall be granted for any needy dependent child shall be determined by the State Department, through its district or county agencies in the county or district in which the child resides, with due regard to the resources and necessary expenditures of the family of such child and the conditions existing in each case, and in accordance with the rules and regulations made by the State Department, and shall be sufficient, when added to all other income and support available to the child to provide such child with a reasonable subsistence compatible with decency and health, within the limitations and provisions of the Constitution of Texas as are now provided, or may later be provided, and, in addition thereto, such funds as the Federal Government may appropriate and allocate to the State of Texas from time to time shall be distributed to the recipients of assistance in like manner as State funds are paid under the terms of this Act.

**Dependent children, application for assistance**

Sec. 23. Application for assistance for a needy dependent child under the provisions of this Act shall be made in the manner and upon the form prescribed by the State Department. During the period in which assistance is granted, the State Department shall have jurisdiction over general guidance of all children aided.

**Dependent children, assistance when living with relatives**

Sec. 24. When the investigation discloses that a child in whose behalf application for assistance has been made is a needy dependent child as defined in this Act, and that such child is living, or will live, with one or more of the relatives prescribed in this Act, assistance may be allowed for the support of such child if other provisions of this Act are complied with.

**Assistance to persons not eligible under other provisions of act**

Sec. 25. Assistance shall be granted under the provisions of this Act to all persons or families who are in dependent and needy circumstances, and who are ineligible for, or not currently receiving, assistance in other categories specified in this Act.

**Local units of administration**

Sec. 26. The State Department shall designate or establish district or local units of administration as its agents in administering or supervising these general relief services.

**State department as agency to cooperate with Federal Government**

Sec. 27. The State Department is hereby designated as the State agency to cooperate with the Federal Government in the proper administration and distribution of Federal surplus commodities and any other Federal resources now on hand and available, or that may be provided in the future.

**State Department as agency to cooperate with Children's Bureau of Federal Department of Labor**

Sec. 28. The State Department is hereby designated as the agency to cooperate with the children's Bureau of the United States Department of Labor in:

- a. establishing, extending, and strengthening, especially in predominantly rural areas, public welfare services for the protection and care of

homeless, dependent, and neglected children and children in danger of becoming delinquent; and

b. developing State services for the encouragement and assistance of adequate methods of community child welfare organization and paying part of the cost of district, county or other local child welfare services in areas predominantly rural and in other areas of special need; and as may be determined by the rules and regulations of said State Department; and

c. developing such plans as may be found necessary to effectuate the services contemplated in this Section, and to comply with the rules and requirements of the Children's Bureau of the United States Department of Labor issued and prescribed in conformity with, and by virtue of, the Federal "Social Security Act."<sup>1</sup>

<sup>1</sup> 42 U.S.C.A. §§ 301-1305.

#### **Appeal to state department from local unit**

Sec. 29. a. In the event that an application for public assistance by a needy blind person, a needy aged person, or with respect to a needy dependent child, is not acted upon by the local unit of administration within a reasonable time after the filing of such an application, or is denied in whole, or in part, or any award of assistance is modified or cancelled, or applicant or recipient is dissatisfied with any action or failure to act on the part of the local administrative unit, the applicant or recipient shall have the right to appeal to the State Department and shall be granted a reasonable notice and opportunity for a fair hearing before the State Department.

b. Within a reasonable time prior to an applicant's or recipient's appeal hearing, he, or his authorized agent, shall be fully advised of the information contained in his record on which action of the local administrative unit was based, if request for such information is made in writing, and no evidence of which the applicant or recipient is not informed, in such instances, shall be considered by the Board as the basis for a decision after a hearing.

#### **Attorneys fees regulated**

Sec. 30. a. It shall be unlawful for any attorney-at-law, or attorney-in-fact, or any other person, firm, or corporation whatsoever, representing any applicant or recipient of assistance to the aged, to the needy blind, or to any needy dependent child, or for any child welfare service with respect to any application before the State Department, or any of its agents, to charge a fee for his services in excess of Ten Dollars (\$10) in aiding or representing any such applicant before the State Department, or for any other service in aiding such applicant to secure assistance or service. It shall likewise be unlawful for any person, firm, or corporation, to advertise, hold himself out for, or solicit the procurement of assistance or service.

b. Any person or persons charged with the duty or responsibility of administering, disbursing, auditing, or otherwise handling the grants, funds, or monies provided for in this Act, and who shall misappropriate any such grants, funds, or monies or who shall by deception or fraud to any other person wrongfully distribute the grants, funds, or monies provided for in this Act, shall be deemed guilty of a felony and shall, upon conviction, be confined in the State Penitentiary for a term of not less than two (2) nor more than twenty (20) years.

#### **Records to be confidential**

Sec. 31. All records concerning any applicant or recipient contemplated in this Act shall be confidential, and shall be open to inspection



only to persons duly authorized by the State, or the United States, to make such inspection in connection with their official duties; provided, however, that factual information in such records shall be available to applicants and recipients or their duly authorized agents; provided, further, that no lists of names of recipients shall be published or distributed for purposes of being made parts of any state, county or city records, or for any other purpose.

**Moving out of state**

Sec. 32. Any person who is receiving assistance under the provisions of this Act and who moves out of and does not reside in the State shall, by virtue of that fact, be deemed ineligible to receive assistance in this State except that temporary absence from the State for such periods of time, and for such reasons as the State Department shall approve, shall not be deemed to interrupt the residence of the recipient.

**Old age assistance as bar**

Sec. 33. No person, who has attained the age of sixty-five (65), and who is not receiving old age assistance, shall by reason of his age, be barred from receiving other public relief and care.

**Purpose of act.**

Sec. 34. The purpose of this Act is to inaugurate a program of social security and to provide necessary and prompt assistance to the citizens of this State who are entitled to avail themselves of its provisions. This Act shall be liberally construed in order that its purposes may be accomplished as equitably, economically and expeditiously as possible.

**Fraudulent assistance, penalty.**

Sec. 35. a. Whoever obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a wilfully false statement or representation or by impersonation, or by other fraudulent means:

1. assistance, services, or treatment to which he is not entitled;
2. assistance, services, or treatment greater than that to which he is justly entitled;
3. or with intent to defraud, aids or abets in buying, or in any way disposing of the property of a recipient of assistance without the consent of the State Department, or whoever violates Section 30 of this Act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined any sum not more than One Hundred (\$100.00) Dollars or be imprisoned for not less than six (6) months, nor more than two (2) years, or be both so fined and imprisoned.

**Transfer of duties, etc.**

Sec. 36. a. The effective date of this Act shall be September 1, 1939. Thereafter, the several officers and agencies of the State whose duties are transferred by this Act to the State Department shall continue to discharge the respective duties which they were discharging at the time of the taking effect of this Act, until the State Board shall certify in writing, to the Secretary of State and the Comptroller of Public Accounts, that the State Department of Public Welfare is organized, as prescribed in this Act and is prepared to assume the duties assigned to it by the provisions of this Act.

b. All matters and orders pending before or made by any officer or department or unit transferred under this Act to the State Department shall be deemed to be continued in like status in such department.

**"State department of public welfare fund."**

Sec. 37. a. There is hereby created in the Treasury of the State of Texas a special fund to be known as the "State Department of Public

Welfare Fund", to be kept separate and apart from all other funds by the State Treasurer. It is provided that the Legislature, out of any monies allocated to said Fund, may appropriate sums of money sufficient to pay the aid and assistance to needy citizens of Texas and for the rendering of other services as provided for in this Act. It is further provided that, out of said Fund, the Legislature may appropriate monies to be used for the purposes of administering this Act.

b. All assistance benefits provided for under the terms of this Act shall be paid by vouchers or warrants drawn by the State Comptroller on the "State Department of Public Welfare Fund"; for the purpose of permitting the State Comptroller to properly draw and issue such vouchers or warrants, the State Department of Public Welfare shall furnish the Comptroller with a list or roll of those entitled to assistance from time to time, together with the amount to which each recipient is entitled. When such vouchers or warrants have been drawn they shall be delivered to the Executive Director of the State Department of Public Welfare, who in turn shall supervise the delivery of same to the persons entitled thereto.

**Assistance awards subject to repeal, etc.**

Sec. 38. All assistance granted under the provisions of this Act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing Act that may hereafter be passed, and no recipient shall have any claims for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing Act.

**Local representatives may take oaths**

Sec. 39. The local representatives of the Department, who are charged with the duty of investigating and determining the eligibility of applicants for assistance under the provisions of this Act, are authorized to administer oaths and take acknowledgments concerning all matters relating to the administration of this Act. No seal shall be required of such representatives of the Department in attesting to oaths administered or acknowledgments taken, but said representatives shall officially sign said oaths or acknowledgments, showing with such signature their position and title. In this connection, these local representatives of the Department, for the purposes of the administration of this Act, shall have the same authority as is now had by Notaries Public co-extensive with the limits of the State of Texas.

**Assistance grants, time limitations**

Sec. 40. It is provided that no grants of aid and assistance shall be made to any needy blind person or for the benefit of any dependent and destitute child until the expiration of ninety (90) days after the effective date of any revenue Act or Acts that may be passed by the Legislature making funds available to be used for the purposes of granting such aid and assistance.

**Severability clause**

Sec. 41. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act or the application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

**County welfare boards continued**

Sec. 42. County Child Welfare Boards established or hereinafter appointed in conformity with Section 4, Act of 1931, Forty-second Legisla-

ture, Page 323, Chapter 194,<sup>1</sup> shall continue to function as provided therein.

<sup>1</sup> Article 695a, § 4.

**Local governments, responsibilities not to be affected, etc.**

Sec. 43. No provision of this Act is intended to release the counties and municipalities in this State from the specific responsibility which is currently borne by those counties and municipalities in support of public welfare, child welfare, and relief services. Such funds which may hereafter be appropriated by the counties and municipalities for those services may be administered through the county or district offices of the State Department, and, if so administered, shall be devoted exclusively to the services in the county or municipality making such appropriation.

**Authorized funds not available**

Sec. 44. If at any time State Funds are not available to pay all grants of assistance in full as authorized in this Act and in House Bill No. 8, Acts Forty-fourth Legislature, Third Called Session,<sup>1</sup> said grants shall be prorated in accordance with requirements of the Federal Social Security Board, insofar as those grants are concerned for the payment of which in part Federal Funds are allocated by said Social Security Board.

<sup>1</sup> For distribution of sections of this Act in Vernon's Annotated Texas Statutes, see Tables.

**Short title**

Sec. 45. This Act shall be known and may be cited as "The Public Welfare Act of 1939". Acts 1939, 46th Leg., p. 544.

Effective September 1, 1939.

Section 46 repeals all conflicting laws and parts of laws; sec. 47 repeals art. 695b; section 48 declared an emergency and provided that the Act should take effect from and after September 1, 1939.

**Title of Act:**

An Act creating a State Department of Public Welfare for the State of Texas; prescribing its rights, powers, functions, and duties; creating and providing for a State Board of Public Welfare; prescribing its rights, powers and duties; defining certain terms; providing for the administration of this Act; providing for payment of Old Age Assistance; providing for assistance to needy blind persons, dependent and destitute children, and persons or families who are in dependent and needy circumstances; accepting for the State of Texas all of the provisions of the Federal Social Security Act, enacted by the Congress of the United States and approved March 14, 1935; transferring all the rights, powers and duties of the Division of Child Welfare of the State Board of Control to the State Department of Public Welfare, and abolishing the Division of Child Welfare of the State Board of Control; transferring all the rights, powers and duties of the Texas Relief Commission to the State Department of Public Welfare and abolishing the Texas Relief Commission; transferring all the rights, powers, and duties of the Texas Old Age Assistance Commission to the State Department of Public Welfare; and

abolishing the Texas Old Age Assistance Commission; providing for the transfer of the staffs, records and physical properties of the Division of Child Welfare of the Board of Control, the Texas Relief Commission, and the Texas Old Age Assistance Commission to the State Department of Public Welfare; designating the State Department of Public Welfare as the State agency to cooperate with the Federal Government in the administration of the provisions Title I, Title IV, Part 3 of Title V, and Title X, of the Federal Social Security Act, and other titles; designating the State Department of Public Welfare as the State agency to cooperate with the Children's Bureau of the United States Department of Labor in certain matters; designating the State Department of Public Welfare as the State agency to cooperate with the Federal Government in the administration and distribution of Federal surplus commodities and other Federal resources; providing for the transfer of certain funds to the credit of the State Department of Public Welfare; creating certain funds in the State Treasury; making appropriations; providing penalties for violation of provisions of this Act; providing a saving clause; providing the effective date of this Act; providing schedule for proration of funds; repealing House Bill No. 7, Chapter 435, Acts of the Regular Session of the Forty-fifth Legislature, and all other Acts, laws or parts thereof in conflict with this Act, and declaring an emergency. Acts 1939, 46th Leg., p. 544.

## TITLE 22—BONDS—COUNTY, MUNICIPAL, ETC.

### CHAPTER ONE—GENERAL PROVISIONS AND REGULATIONS

Art.

716b. Validating county bond issues and elections between June 19 and August 17, 1936. [New].

717d. Validating county bonds for road construction and tax levies. [New].

Art.

717e. Validating bonds and proceedings of Water Improvement districts, Drainage districts, and other districts and cities, towns, etc., issued for loans or grants by Federal Agencies [New].

#### Art. 704. [607] Time of election [Notice of election]

Acts 1939, 46th Leg., Spec.L., p. 1003, effective June 1, 1939, reads as follows:

Acts 1939, 46th Leg., Spec.L., p. 999, filed without Governor's signature June 1, 1939, reads as follows:

"Section 1. That in all cases where any city in the State of Texas which operates under the General Laws of Texas, and which city is located in any county having a population of less than twenty-seven thousand, five hundred (27,500) and more than twenty-seven thousand, four hundred (27,400) according to the last preceding United States Census, and which such city has heretofore and subsequent to the enactment of Chapter 382, Acts of the First Called Session of the Forty-fourth Legislature of the State of Texas, 1935, submitted to the qualified electors of said city the question of the issuance of bonds of such city pursuant to the provisions of Article 1111, et seq. of the Revised Civil Statutes of Texas, certain bonds to be paid solely from the revenues derived from the operation of a municipal light and power distribution system, and where a majority of the qualified voters of said city voted in said election on said proposition has voted in favor of the issuance of such bonds and in favor of pledging the net revenues of said system for the payment of such bonds, said election and all proceedings heretofore had in connection with the calling and holding of said election and in connection with the authorization and sale of such bonds are hereby validated, ratified, and confirmed despite any irregularity which may have occurred therein or despite any failure to observe any of the pertinent laws of the State of Texas, and said city is hereby authorized to complete its proceedings for the authorization and delivery of such bonds and to deliver such bonds upon receipt of the purchase price thereof and such bonds when approved by the Attorney General, registered by the State Comptroller of Public Accounts, sold at not less than par and accrued interest, and they are hereby declared to be and shall be the valid and legal obligation of said city in accordance with the terms thereof, and shall be paid as to both prin-

icipal and interest from the net revenues of the light system of said city in accordance with the provisions of the proceedings so authorizing the bonds. Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law."

"Section 1. That in all cases where any city in the State of Texas which has a population of more than fifty thousand (50,000) and less than one hundred thousand (100,000), according to the last preceding United States Census, and is operating under a home rule charter adopted at an election held for the purpose, pursuant to amended Section 5, Article 11, of the Texas Constitution, and which such city has heretofore and subsequent to the enactment of Chapter 332, of the General Laws passed by the Forty-fourth Legislature of the State of Texas, at its First Called Session in 1935, submitted to the qualified electors of said city the question of the issuance of bonds of such city and the levy of ad valorem taxes sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity, and where a majority of the qualified electors of said city, voting at said election on said proposition, voted in favor of the issuance of such bonds and in favor of the levying of such tax, said election and all proceedings heretofore had in connection with the calling and holding of said election, and in connection with the authorization of such bonds, are hereby validated, ratified and confirmed, notwithstanding any irregularity which may have occurred therein, or any failure to observe any of the pertinent laws, and said city is hereby authorized to complete the proceedings for the authorization and delivery of such bonds and to deliver such bonds upon receipt of the purchase price thereof, and such bonds, when approved by the Attorney General, registered by the State Comptroller of Public Accounts, sold at not less than par and accrued interest, and deliv-

ered, shall be the valid and legal obligations of said city, in accordance with the terms thereof, and shall be paid as to both principal and interest by the levy of a continuing direct annual ad valorem tax on all taxable properties situated within the limits of said city; provided, however,

that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law."

**Art. 716b. Validating county bond issues and elections between June 19 and August 17, 1936**

That all proceedings heretofore had by the governing bodies of all counties, between June 19, 1936 and August 17, 1936, both inclusive, in the State of Texas in connection with the issuance of bonds for any purpose, including the orders for and notices of elections, the conduct and returns of elections, and the canvassing of such returns of such elections, and the bonds heretofore or hereafter issued pursuant thereto, are hereby in all things fully validated, confirmed, approved and legalized, including among others, instances wherein there have been irregularities in the calling of elections and the giving of notice of elections, notwithstanding the fact that the election order designated a time for holding the election on a day more than thirty (30) days from the date of such order, and notwithstanding the fact that the notice of election was posted within such county instead of having been both posted and published in a newspaper of general circulation, and notwithstanding the fact that both such irregularities have occurred in connection with the same election. All bonds issued pursuant to such proceedings, when approved by the Attorney General of the State of Texas, registered in the office of the Comptroller of Public Accounts, and delivered to the purchasers thereof, shall constitute valid and binding obligations of such county. All tax levies made by such governing bodies for the purpose of paying the principal of and interest on such bonds, are hereby in all things validated, confirmed, approved and legalized.

Provided, however, that the provisions of this Act shall not apply to any such proceedings or obligations issued thereunder, the validity of which is being contested or attacked in any suit or litigation pending at the time this Act becomes effective, or that may be filed sixty (60) days after the effective date hereof and shall not validate any levy, assessment of valuation made or placed on any property where any suit, as aforementioned, shall be or shall have been filed within the time aforementioned. [Acts 1936, 44th Leg., 3rd C.S., p. 2098, ch. 504, § 1.]

Effective 90 days after Oct. 27, 1936, date of adjournment.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating all proceedings heretofore had by the governing bodies of all counties in connection with the issuance of bonds for any purpose, including election orders, notices of election, returns of election, orders canvassing election returns, and bonds issued pursuant thereto, including among others, instances wherein there have been irregularities in the call-

ing of elections and in the giving of notice of elections; providing that when approved by the Attorney General and registered in the office of the Comptroller of Public Accounts and delivered to the purchasers thereof said bonds shall constitute valid and binding obligations, validating tax levies made to support said bonds; providing that the provisions of this Act shall not apply in instances wherein the validity of such proceedings or obligations is being litigated at the time this Act becomes effective, and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 2098, ch. 504.]

**Art. 717d. Validating county bonds for road construction and tax levies**

Section 1. That where, under authority of Section 52, of Article 3, of the Constitution of the State of Texas, a two-thirds majority of

the resident property taxpayers, being qualified electors of any county voting on the proposition, having voted at an election held in such county called by the County Commissioners' Court of such county, in favor of the issuance of bonds of such county and the levy of a tax upon the taxable property therein for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof for the construction, maintenance and operation of macadamized, graveled or paved roads or turnpikes, or in aid thereof within such county, the canvass of said vote, revealing such majority having been recorded in the minutes of said County Commissioners' Court, and where thereafter the County Commissioners' Court of each such county, by order adopted and recorded in its minutes, authorized the issuance of such bonds of such county, prescribed the date and maturity thereof and rate of interest the bonds were to bear, the place of payment of principal and interest, and providing for the levy of a tax upon the valuation of taxable property in each such county according to the value thereof as fixed for State and County purposes, sufficient to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, and such bonds were approved by the Attorney General of the State of Texas and thereafter issued and delivered, each such election and all acts and proceedings had and taken in connection therewith by such County Commissioners' Court in respect of such bonds, levy of taxes, construction, maintenance and operation of macadamized, graveled or paved roads or turnpikes, or in aid thereof, are hereby legalized, approved and validated; and such bonds are hereby validated and constitute the legal obligations of such county. Any such county bonds heretofore voted and authorized, as aforesaid, and not yet issued, may be issued and delivered by order of the County Commissioners' Court of such county when approved by the Attorney General of the State of Texas and such bonds shall constitute the valid and binding obligation of such county.

Sec. 2. That taxes, sufficient to pay the principal of and interest upon such bonds, so levied for such purpose upon the valuation of taxable property in such County, according to the value of taxable property as determined for State and County purposes, are hereby found and fixed as the amount to be raised in each such county, and constitute the basis for such taxation, and the assessment and levy of such taxes is hereby validated and legalized; and such taxes, in an amount sufficient to pay the principal of and interest upon such bonds now outstanding, or hereafter issued, as aforesaid, shall be annually assessed and collected according to the value of taxable property as fixed for State and County taxes, by the County Commissioners' Court of each such county and express authority so to do is hereby delegated and granted to such courts.

Sec. 3. That such orders, and all other orders adopted by such County Commissioners' Court in respect of such bonds and taxes, as the same appear upon the record of such court, or copies thereof duly certified, are hereby constituted legal evidence of such orders, and shall be authority for such court to annually levy, assess and collect taxes in an amount sufficient to pay the principal of and interest upon such bonds as the same mature and become due, such taxes to be levied and assessed upon the value of taxable property in such county as fixed for state and county taxes.

Sec. 4. That the legislature hereby exercises the authority upon it conferred by Section 52, of Article 3, of the Texas Constitution, and confirms and ratifies the acts and proceedings of such courts in respect of such election, authorization, issuance and delivery of such bonds, the levy of taxes to pay principal thereof and interest thereon, with like ef-

fect, as though at the time or times said acts and proceedings were done or had, there existed statutory authority for the doing thereof. Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law. [Acts 1937, 45th Leg., p. 12, ch. 12.]

Effective Feb. 22, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating and legalizing bonds issued by counties for the construction of roads within such counties and the levy of taxes for payment of such county bonds; authorizing the assessment and collection of general ad valorem taxes in

all such counties for the payment of such county bonds now outstanding or hereafter issued; providing, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law, and declaring an emergency. [Acts 1937, 45th Leg., p. 12, ch. 12.]

**Art. 717e. Validating bonds and proceedings of Water Improvement districts, Drainage districts, and other districts and cities, towns, etc., issued for loans or grants by Federal Agencies**

Section 1. This Act may be cited as "The 1939 Validating Act."

Sec. 2. As used in this Act:

(a) The term "public body" includes a Water Control and Improvement District, Water Improvement District, Irrigation District, Conservation and Reclamation District, Drainage District, Levee District, Navigation District, Road District, School District, County, City or Incorporated Town or Village of this State.

(b) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, or including all instruments or obligations payable from a special fund.

Sec. 3. All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body to or for the benefit of which, any loan or grant or both has been made heretofore by the United States of America through the Federal Emergency Administration (or Administrator) of Public Works or the Reconstruction Finance Corporation for the purpose of financing or aiding in the financing of such work, undertaking or project, or for the purpose of funding or refunding previously existing indebtedness, including all proceedings for the authorization and issuance of such bonds, the provisions made for the payment thereof, and the sale, execution and delivery thereof, are hereby validated notwithstanding any lack of previous legislative authorization to such public body, or the governing body thereof, to issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings, or in such sale, execution or delivery; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body. All bonds heretofore authorized for such purposes by an election or by action of the governing body of a public body to or for which a loan or grant, or both has been made by the United States of America through the Federal Emergency Administration (or Administrator) of Public Works, or the Reconstruction Finance Corporation, shall, when issued (and when

approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts if such approval and registration are authorized by statute) be binding legal, valid and enforceable obligations of such public body, notwithstanding any lack of previous legislative authorization, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings, or in the execution, sale or delivery thereof.

Sec. 4. Provided, however, that the provisions of this Act shall not be construed as validating any such proceedings, or bonds or other obligations issued by virtue thereof, where the validity of any such proceedings, or obligations or bonds issued thereunder has been contested or attacked in any suit or litigation instituted prior to the delivery of such bonds to the Federal Emergency Administration of Public Works or the Reconstruction Finance Corporation, and pending at the time this Act becomes effective. Acts 1939, 46th Leg., p. 687.

Effective June 7, 1939.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating bonds and other instruments or obligations, and the proceedings in reference thereto, heretofore issued by Water Control and Improvement Districts, Water Improvement Districts, Irrigation Districts, Conservation and Reclamation Districts, Drainage Districts, Levee Districts, Navigation Districts, Road Districts, School Districts, Counties, Cities, Incorporated Towns and Villages of this State for public works projects or for the funding or refunding of indebtedness theretofore incurred; and validating all bonds heretofore authorized for such purposes by an election or by action of the governing body of a public body to or for which a loan or grant, or both has been made by the United States of America through the Federal Emergency Administration (or Administrator) of Public Works,

or the Reconstruction Finance Corporation, shall, when issued (and when approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts if such approval and registration are authorized by statute) be binding legal, valid and enforceable obligations of such public body, notwithstanding any lack of previous legislative authorization, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings, or in the execution, sale or delivery thereof; restricting the application of this Act to instances wherein either loans or grants or both have been made to such public bodies by the United States of America, providing that the provisions of the Act shall not apply to any proceedings authorizing the issuance of bonds, notes or warrants, or to such securities in litigation instituted prior to the delivery of such securities and pending when the Act becomes effective, and declaring an emergency. Acts 1939, 46th Leg., p. 687.

## CHAPTER TWO—COURTHOUSE, JAIL AND OTHER BONDS

### Art. 718. [610] [877] County issues authorized

County hospitals and bonds therefor, see, also, art. 4478, et seq.

## CHAPTER THREE—PUBLIC ROAD BONDS

### 1. COUNTY AND DISTRICT BONDS

Art.

752y—2. Refunding road bonds in counties lands of which are purchased for reforestation [New].

### 1. COUNTY AND DISTRICT BONDS

#### Art. 752x. Refunding bonds

Funding or refunding road bonds in Collin County, special act, see Acts 1936, 44th Leg., 3rd C.S., p. 2094, ch. 503.



**Art. 752y—2. Refunding road bonds in counties lands of which are purchased for reforestation**

That the Commissioners Court of any county wherein the United States Government has or shall hereafter purchase or has designated a purchase unit of at least twenty-five (25) per cent in area of the land in said county for reforestation and other purposes may, with the consent of the Board of County and District Road Indebtedness and the holders of at least eighty (80) per cent of the bonds hereinafter described, refund, under the provisions of existing law, the road bonds of any such county or of any road district or political subdivision thereof, which bonds participate in the County and Road District Highway Fund, into one or more series of refunding bonds and may provide that the eligibility of the bonds being refunded shall be distributed among the various series of refunding bonds in such amounts, or none, as may be agreed upon; provided that the eligibility, in dollars and cents, of bonds whose owners do not agree to such distribution shall not be affected thereby. Acts 1937, 45th Leg., p. 371, ch. 181, § 1.

Effective April 20, 1937.

Section 2 of this Act declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act providing that the Commissioners Court of any county wherein the United States Government has or shall hereafter purchase or has designated a purchase unit of at least twenty-five (25) per cent in area of the land in said county for reforestation and other purposes may, with the consent of the Board of County and District Road Indebtedness and the holders of at least eighty (80) per cent of the bonds hereinafter described,

refund, under the provisions of existing law, the road bonds of any such county or of any road district or political subdivision thereof, which bonds participate in the County and Road District Highway Fund, into one or more series of refunding bonds and may provide that the eligibility of the bonds being refunded shall be distributed among the various series of refunding bonds in such amounts, or none, as may be agreed upon; provided that the eligibility, in dollars and cents, of bonds whose owners do not agree to such distribution shall not be affected thereby, and declaring an emergency. [Acts 1937, 45th Leg., p. 371, ch. 181.]

## CHAPTER FIVE—FUNDING, REFUNDING AND COMPROMISES

**Art.**  
**802a.** Funding indebtedness representing difference between wages paid and wages required to be paid to firemen and policemen by cities of over 75,000 population [New].

**Art.**  
**802b—1.** Home rule cities without specified utilities authorized to issue finding bonds or warrants [New].

**Art. 802a.** Funding indebtedness representing difference between wages paid and wages required to be paid to firemen and policemen by cities of over 75,000 population

Section 1. All cities within the State of Texas, whether incorporated under General Law or Special Law or operating under charters adopted under the provisions of Article XI, Section 5, of the Constitution of Texas, with a population of more than seventy-five thousand (75,000) enumerated by the preceding United States Census, shall have the power to fund by ordinance enacted by the governing body the whole or any part of any legal debt of said city, which debt is the difference between the wages paid or to be paid the firemen and the policemen, and the wages required to be paid the firemen and the policemen by the terms of Senate Bill No. 89, passed and approved the 19th day of April, A. D. 1937, by the Forty-fifth Legislature of Texas, at the Regular Session,<sup>1</sup> and which debt accrued or will have accrued before the 31st of May, A. D. 1939, and to issue negotiable bonds with or without coupons, bearing interest at an annual rate as provided by

the Charter of the City which issues the said obligations. The proceeds from the sale of such bonds shall be used exclusively for the purpose of paying the debt which may be legally due such firemen and policemen.

Sec. 2. Articles 709 to 715 and Article 4398 of the Revised Statutes of Texas for 1925 shall apply to all bonds issued under this Act.

Sec. 3. The provisions of this Act shall be cumulative of all laws on this subject, and wherever the provisions of this Act are in conflict with any existing law or laws on this subject, the provisions hereof, in so far as same are in conflict with any existing law or laws, shall govern and control. Acts 1939, 46th Leg., p. 98.

<sup>1</sup> Penal Code, art. 1583.

Effective Feb. 21, 1939.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing certain cities to fund by ordinance enacted by the governing body the whole or any part of any legal debt of said city, which debt is the difference between the wages paid or to be paid the firemen and the policemen, and the wages, required to be paid the firemen and policemen by the terms of Senate Bill No. 89, passed and approved the 19th of April, A. D. 1937, by the Forty-fifth Legislature of Texas, at the Regular Session, and which debt accrued or will have accrued before the 31st of May, A. D. 1939, and to issue negotiable bonds with or without coupons, bearing interest at an

annual rate as provided by the Charter of the City which issues the said obligations, the proceeds from sale of such bonds to be used exclusively for the purpose of paying debts legally due such firemen or policemen; providing that Articles 709 to 715 and Article 4398 of the Revised Statutes of Texas for 1925 shall apply to all bonds issued under this Act; providing that the provisions of this Act shall be cumulative of all laws on this subject, and wherever the provisions of this Act are in conflict with any existing law or laws on this subject, the provisions hereof, in so far as same are in conflict with any existing law or laws, shall govern and control; and declaring an emergency. Acts 1939, 46th Leg., p. 98.

**Art. 802b—1. Home rule cities without specified utilities authorized to issue funding bonds or warrants**

Section 1. That the governing body of any city or town operating under its special charter adopted under the Home Rule Amendment to the Constitution, having outstanding as of January 1, 1939, unpaid and delinquent indebtedness against its General Fund, whether in the form of scrip warrants, warrants or notes, or in either or all of such forms, in an amount exceeding thirty-three and one-third (33-1/3%) per cent of its current tax levy for General Fund purposes, and which did not, on said date, own any one of the following utilities from which it could derive revenues: water system, sanitary sewer system, electric lighting system, or natural gas distribution system, is hereby authorized to issue funding bonds or funding warrants for the purpose of funding any such items which constitute legal indebtedness of such city. No election nor notice of intention to issue such funding bonds or warrants shall be required. If funding bonds are issued they shall be issued in the manner prescribed by Article 717 of the Revised Civil Statutes for the issuance of refunding bonds.

Sec. 2. Such funding bonds or warrants shall mature serially, or otherwise, not to exceed thirty (30) years from their date and shall bear a rate of interest not to exceed five (5%) per cent per annum, payable annually or semi-annually.

Sec. 3. When said funding bonds or warrants are issued it shall be the duty of the governing body of such city to levy a tax sufficient to pay the principal and interest thereon as such principal and interest mature.

Sec. 4. If funding bonds are issued they shall be submitted to the Attorney General of the State of Texas for his examination and approval

in the same manner and with the same effect as is provided in Article 709 to 715, both inclusive, of the Revised Civil Statutes of 1925, and shall be registered by the Comptroller of Public Accounts as is provided in said Articles.

Sec. 5. All such outstanding indebtedness is hereby validated, provided that the provisions of this section shall not be applicable to any such items of indebtedness which may be in litigation at the time this Act becomes effective.

Sec. 6. This Act shall be cumulative of all other laws on the subject, but in the event any of its provisions are in conflict with any existing laws the provisions hereof shall prevail and be effective to the extent of such conflict. Acts 1939, 46th Leg., p. 103.

Filed without Governor's signature April 28, 1939.

Section 7 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing cities eligible under the terms of this Act to fund certain indebtedness outstanding on January 1, 1939; prescribing the method and procedure for issuance of funding bonds and warrants, and which did not, on said date, own any

one of the following utilities from which it could derive revenues; water system, sanitary sewer system, electric lighting system, or natural gas distribution system; validating such outstanding indebtedness not in litigation at the time this Act becomes effective; providing that this Act shall be cumulative of all other Acts but that its provisions shall prevail in the event of conflict with other laws; enacting provisions incident to and relating to the subject, and declaring an emergency. Acts 1939, 46th Leg., p. 103.

## CHAPTER SEVEN—MUNICIPAL BONDS

**Art.**

**827a.** Payment of warrants and vouchers previously issued [New].

**835e-1.** Refunding bonds of home rule cities validated [New].

**Art.**

**835g.** Use for other purposes of bond monies dedicated to specific public improvement in certain cities and towns; election authorizing transfer [New].

**Art. 827a. Payment of warrants and vouchers previously issued**

That the towns and cities, organized under and governed by the General Laws of the State of Texas, may renew, extend and pay warrants and vouchers executed and delivered for the purpose of securing funds and for the purpose of borrowing funds for the use of such towns and cities prior to June 1, 1932, and all extensions and renewals thereof; provided that the provisions hereof shall apply only where such funds received and borrowed, and used by such towns and cities prior to June 1, 1932, do not exceed the total sum of Eight Thousand (\$8,000.00) Dollars. Such warrants and vouchers may be so issued to bear interest at the rate of not to exceed six per cent (6%) per annum and may be so issued without the necessity of the approval thereof by the Attorney General and without the necessity of a registration thereof by the Comptroller, and may be made payable within one year from date of the issuance or more than one year; taxes may be levied and used to provide for the payment thereof; providing, however, that nothing herein shall affect any pending litigation. Acts 1937, 45th Leg., p. 304, ch. 159, § 1.

Effective April 15, 1937.

Section 2 of this Act declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act providing for the payment of warrants and vouchers issued by towns and cities in the State of Texas for funds

received and used by such towns and cities in a sum not to exceed Eight Thousand (\$8,000.00) Dollars prior to June 1, 1932, and applying to such warrants and vouchers issued as renewals of such original warrants and vouchers; providing that this Act shall not affect pending litigation, and declaring an emergency. [Acts 1937, 45th Leg., p. 304, ch. 159.]

**Art. 835c. Hospital sites in cities and counties**

That any city or county in this State, acting by or through the governing body of such city or Commissioners Court of such county, may issue negotiable bonds of the city or county, as the case may be, and levy taxes for the sinking fund of such bonds, and the levying of such taxes being in accordance with Chapter 1, Title 22, of the Revised Civil Statutes, of 1925, which bonds may be sold and the proceeds thereof shall be applied to condemnation or purchase, either or both, of lands to be used for hospital purposes; and which lands when so acquired, or if such city or county shall already own land or sites that are suitable and adequate for hospital purposes, then such lands so owned, may be by such city or county donated to the State of Texas or the United States of America for hospital purposes, where the State of Texas or United States of America has or may agree to erect and maintain hospitals thereon; or if any such city or county has in its general fund sufficient funds for the acquisition of such property, same may be diverted and applied for such use; provided also that such city or county may stipulate for and agree to accept a nominal award as full compensation for such lands in any condemnation proceeding, including proceedings pending when this Act becomes effective, instituted by the State of Texas or the United States of America for the acquisition of such lands for hospital purposes; provided further that all such donations or contracts to make such donations made or entered into by and between any city or county in this State and the United States of America prior to the date of the approval of this Act, whether consummated by voluntary conveyance, condemnation proceedings, or otherwise, be and the same are fully and completely validated, ratified, and confirmed; and provided further that nothing in this Act shall be construed by any city or county to exceed the limits of indebtedness placed upon it under the Constitution. As amended Acts 1939, 46th Leg., p. 381, § 1.

Effective May 11, 1939. the act should take effect from and after  
Section 2 of the amendatory Act of 1939 its passage.  
declared an emergency and provided that

**Art. 835e—1. Refunding bonds of home rule cities validated**

Section 1. That in each instance wherein any city operating under a special charter, either adopted by vote of the people or granted by the Legislature and thereafter amended by vote of the people, which allocates its permitted taxing power to specified purposes at fixed rates for each such purpose, has passed an ordinance or ordinances authorizing the issuance of refunding bonds to refund all of the outstanding bonds of such city, and said refunding bonds and bonds to be refunded thereby have been approved by the Attorney General of the State of Texas, the proceedings had by such city in authorizing the issuance of said refunding bonds and the tax levied to pay the principal and interest thereof are hereby validated, and said refunding bonds, when registered by the Comptroller of Public Accounts in exchange for the bonds to be refunded thereby are hereby validated, notwithstanding the fact that one or more issues of such refunding bonds or of the bonds refunded thereby may have been authorized and issued for the purpose of refunding bonds originally payable from such separate tax allocations, and the taxes levied to pay the principal and interest of such refunding bonds are hereby validated and shall not be affected by any provisions of such charter requiring allocation of such taxes to such specific purposes.

Sec. 2. The provisions of this Act shall not be construed as validating any bonds, the validity of which is being questioned in litigation

pending at the time this Act becomes effective. Acts 1939, 46th Leg., p. 699.

Filed without the Governor's signature, June 13, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating refunding bonds authorized by any home rule city whose charter allocates its permitted taxing power to specified purposes, and which refunding bonds were authorized to refund all of the outstanding bonds of such city, and have been approved by the Attorney General, notwithstanding the fact one or more issues of such refunding bonds or the bonds

refunded thereby may have been authorized and issued for the purpose of refunding bonds originally payable from such separate tax allocations; validating the proceedings authorizing such refunding bonds and the taxes levied for their payment; providing that such taxes shall not be affected by charter provisions requiring allocation of such taxes to specific purposes; providing this Act shall not be construed as validating any bonds the validity of which is questioned in litigation pending at the time the Act becomes effective; and declaring an emergency. Acts 1939, 46th Leg., p. 699.

**Art. 835g. Use for other purposes of bond monies dedicated to specific public improvement in certain cities and towns; election authorizing transfer**

Section 1. That all cities and towns in this State having a population of not less than 15,100 and not more than 15,250, according to the last preceding Federal Census, which have the exclusive control of the schools within its limits, are hereby expressly authorized to utilize bond monies on hand, which have heretofore been authorized by the Council of said City, for public improvements of whatsoever character within said city, for the use and benefit of the public schools within such city or any purpose authorized by City Commission. Provided that before any such transfer shall be authorized the question of the transfer shall be submitted to the property tax paying voters of said city at an election to be held in accordance with the provisions of the law which were followed in issuing the bonds originally. And no such transfer shall be made unless a majority of the legally qualified voters of said City vote in favor of such transfer. Provided further, that this law shall not apply in any case wherein the funds are being expended upon the public works for which they were voted. It is expressly provided that it shall only apply in case the public improvement for which the bonds were originally issued have never been commenced.

Sec. 2. The City Council, by following the procedure set out in Section 1, is hereby authorized to repurchase and cancel such bonds, if in their discretion the same is for the benefit of the property tax paying voters of the municipality. [Acts 1937, 45th Leg., 2nd C.S., p. 1865, ch. 2.]

Effective Oct. 14, 1937.

Further provisions of section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing cities or towns in this State of a population of not less than 15,100, or more than 15,250, according to the last preceding Federal Census, such cities having exclusive control of the schools within its limits, to hold elections

for the purpose of applying bond monies already dedicated to public improvements to purposes other than those for which the bond election was authorized or to repurchase and cancel such bonds. Provided that such money may, in the discretion of the governing body, be used for any purpose determined by an election of tax paying voters, and declaring an emergency. Acts 1937, 45th Leg., 2nd C.S., p. 1865, ch. 2.

## CHAPTER EIGHT—SINKING FUNDS—INVESTMENTS, ETC.

Art.

837a. Investment of sinking funds of county or navigation district in counties in excess of 190,000 [New].

Art. 837a. Investment of sinking funds of county or navigation district in counties in excess of 190,000

This Article shall apply only to and in counties having a population in excess of 190,000 according to the last preceding or any future Federal Census. Investments of sinking funds of any county and Navigation District shall be made in the manner provided by Article 837 and the terms governing the purchase of any securities authorized by this Chapter, shall be reflected by appropriate minutes of the governing body with a complete description of the securities purchased. Upon receipt of said securities and payment therefor the same shall be forthwith delivered to the Depository and in the event there is no Depository, then to the Treasurer of the county, who shall arrange for said securities to be placed in a safety deposit vault or other secure place if no safety deposit vault is available, and the contract of arrangement shall provide simultaneous or joint access to said securities by the Treasurer and the County Auditor. A written record of the securities purchased and deposited in said safety deposit box shall be maintained therein, and shall at all times reflect the condition of the investments. A copy of such record shall be maintained by the Depository. Access to said box shall be only in the presence of the above named officials and officers of the Depository. The bond of the Depository shall secure said securities.

The County Auditor shall prescribe the system of accounts for said security record and the type of reports necessary thereto, and shall not less than once in each six months audit the same and count the securities in said safety deposit vault, and file a report thereof with the governing body of said county or Navigation District respectively, and also with the Depository. The duties herein imposed are official duties and are within the terms of the official bonds of the officers named who shall be responsible for the safe deposit and withdrawal of said securities. No securities shall be withdrawn from said safety deposit box except upon the written order of the Commissioners' Court, recorded in its minutes, a copy of which shall be furnished the Depository and the County Auditor. Acts 1937, 45th Leg., p. 193, ch. 101, § 1.

Effective April 6, 1937.

Section 2 of Acts 1937, 45th Leg., p. 193, ch. 101, repeals all conflicting laws and parts of laws and section 3 declares an emergency making the act effective on and after its passage.

Title of Act:

An Act to provide for the care, safe-keeping, and custody of securities in which the sinking funds for the redemption and

payment of outstanding bonds of any county of more than 190,000 population, or a Navigation District in counties of more than 190,000 population, may have been invested by the legally authorized governing body thereof; providing for the audit thereof, and declaring an emergency. [Acts 1937, 45th Leg., p. 193, ch. 101.]

## CHAPTER NINE—STATE RELIEF BONDS

Art.

842f. Refunding Texas Relief Bonds, First Series [New].

## Art. 842f. Refunding Texas Relief Bonds, First Series

Section 1. The Texas Bond Commission heretofore created by Chapter 37, Acts of the First Called Session of the Forty-third Legislature of Texas,<sup>1</sup> is hereby authorized to refund the Texas Relief Bonds, First Series, heretofore issued and sold under the provisions of Section 51a, Article III, of the Constitution of Texas, upon the terms and conditions hereinafter set out.

Sec. 2. Said Texas Bond Commission is hereby authorized to exercise the option to redeem Texas Relief Bonds, First Series, which option is provided for in the aforesaid Chapter 37, and may issue refunding bonds in lieu of so many of said Texas Relief Bonds, First Series, as may be outstanding and unpaid with the funds provided by said Chapter 37 for the payment thereof. Said Texas Bond Commission shall also be authorized to enter into a fiscal agency contract for the purpose of calling said First Series Bonds and refunding the same at a lower rate of interest; and said contract may provide that when the bonds of said First Series are called for redemption the fiscal agent shall provide the money with which to pay the principal and accrued interest thereon to the date of call, and said Bonds and coupons shall be delivered to the fiscal agent to be exchanged by him for refunding bonds upon the terms and conditions provided in said contract; provided that no commission or fee shall be paid, nor shall any discount be allowed, to said fiscal agent, but said contract may provide for the sale of said refunding bonds to said fiscal agent. Notice of intention to issue said refunding bonds shall be published once a day for three consecutive days, the date of the first publication to be at least two weeks prior to the date of the execution of said fiscal agency contract, said publication to be made in three newspapers of general circulation in the State of Texas. The contract as fiscal agent shall be awarded to that person, group of persons, corporation, or group of corporations, submitting the best bid for said refunding bonds, which said bids shall be received under seal by the said Texas Bond Commission on a date set by said Texas Bond Commission and stated in said notice by publication. All expenses in connection with the refunding of said bonds shall be paid by said fiscal agent.

Sec. 3. The refunding bonds described in Section 2 hereof shall be known as the "Texas Relief Refunding Bonds, First Series," shall be dated as of the date of call for said outstanding and unpaid bonds of said First Series, which shall be determined by the Texas Bond Commission, shall bear interest at not to exceed 2% per annum, payable semi-annually, and shall mature in serial annual installments in amounts to be determined by said Texas Bond Commission, but no bond shall mature beyond October 15, 1943, and said bonds shall be payable at the office of the State Treasurer in Austin, Texas. Each of said bonds shall be signed by the Governor, attested by the Secretary of State under the seal of the State of Texas, and registered by the State Comptroller of Public Accounts, and the lithographing of the facsimile signatures of such officers on the coupons shall be sufficient for such purpose.

Sec. 4. Said Texas Bond Commission is hereby authorized to do any and all things necessary to carry out the purpose of this Act, to enter into said fiscal agency contract, and to issue and deliver said refunding

bonds. The provisions of said Chapter 37 in regard to the "Texas Relief Bond Sinking Fund," and the payment of principal and interest on said Texas Relief Bonds, First Series, shall apply with full force and effect to said Texas Relief Refunding Bonds, First Series, and there is hereby appropriated for the years ending August 31, 1940, and August 31, 1941, an amount for each of said years out of said "Texas Relief Bond Sinking Fund" equivalent to the amount of principal and interest maturing in each of said years respectively, and the State Treasurer is hereby directed to make payment of said principal and interest on each of said years upon presentation of bonds and coupons in evidence thereof. The Texas Bond Commission shall be continued as such until all Texas Relief Bonds of all series, and all interest thereon have been fully paid, and all of said bonds have been cancelled, and the record of said cancellation placed upon the Minutes of said Commission. Acts 1939, 46th Leg., p. 539.

<sup>1</sup> Article 842b, § 2.

Effective Feb. 15, 1939.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing the refunding of Texas Relief Bonds, First Series, prescribing the duties and authority of the Texas Bond Commission in connection with the

calling and refunding of said bonds at a lower rate of interest, prescribing the terms and conditions for the issuance and payment of said refunding bonds, making an appropriation for the payment of principal and interest of said refunding bonds for the biennium ending August 31, 1941, and declaring an emergency. Acts 1939, 46th Leg., p. 539.



## TITLE 24—BUILDING AND LOAN ASSOCIATIONS

Art.

881a—10a. Joint Examinations [New].  
881a—37a. Loans secured by shares; limitation on amount [New].  
881a—37b. Insurance under National Housing Act [New].

Art.

881a—57a. Rights, powers, exemptions and immunities of association and its shareholders [New].

### Art. 881a—7. Supervision and control

The Banking Commissioner of Texas shall have supervision over and control of all building and loan associations doing business in this State (except Federal Savings and Loan Associations organized under and by virtue of the Home Owners' Loan Act of 1933,<sup>1</sup> passed by the Congress of the United States), and shall be charged with the execution of the laws of this State relating to such associations. All such building and loan associations shall be deemed and are hereby declared to be instrumentalities and agencies of the State Government and shall be charged with the duty and responsibility to act as fiscal agents for the State when requested to do so. The Banking Commissioner shall appoint a building and loan supervisor who shall have had not less than two (2) years' actual experience in the operation and management in an executive position of a building and loan association, or who shall have had not less than eighteen (18) months' actual experience in the supervision of building and loan associations, or one who has had not less than two (2) years' experience in the employ of a building and loan association and not less than two (2) years' actual experience as a building and loan examiner.

He shall likewise appoint such building and loan examiners as in his judgment may be necessary to examine at proper and suitable intervals all building and loan associations under his supervision, which said examiners shall have had not less than one (1) year's actual experience in the accounting division of a building and loan association, or shall have had not less than two (2) years' actual experience in examining building and loan associations. He shall appoint such other employees as may be necessary to properly and adequately supervise the building and loan associations under his supervision, who are fitted and qualified by training and experience to perform the duties they are required to perform. As amended Acts 1939, 46th Leg., p. 76, § 1.

<sup>1</sup> 12 U.S.C.A. §§ 1461-1468.

Effective May 8, 1939.

Section 2 of the amendatory Act of 1939

declared an emergency and provided that the Act should take effect from and after its passage.

### Art. 881a—10a. Joint Examinations

Any regulatory or other public authority or officer of this State required, authorized, or permitted to examine any institution which is a member of a Federal Home Loan Bank or which is insured by Federal Savings and Loan Insurance Corporation, may, in lieu of making any such examination, accept an examination of any such institution made by the Federal Home Loan Bank Board, a Federal Home Loan Bank, or Federal Savings and Loan Insurance Corporation, or may examine any such institution in conjunction with the Federal Home Loan Bank Board, a Federal Home Loan Bank, or Federal Savings and Loan Insurance Corporation. Any such regulatory or other public authority or officer may make available to the Federal Home Loan Bank Board, the Federal Home Loan Bank in which an association holds membership, and Federal Savings and Loan Insurance Corporation, any information furnished to, or

obtained by, and all or any part of any report of any examination of any such institution made by any such regulatory or other public authority or officer. Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 10a; added Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881—7, ante.

#### Art. 881a—16. Remedies cumulative—liquidation

The rights and remedies given by the two preceding sections are cumulative of each other, but no involuntary liquidation of any association shall be accomplished except as above provided; that is to say, at the suit of the Attorney General on information and request of the Banking Commissioner of Texas; provided:

(a) In the event it shall be determined by the court having jurisdiction, that an association should be wound up and its affairs liquidated, and shall so order, then the Banking Commissioner of Texas shall be forthwith charged with the duty to take possession of such association, its assets and affairs, collect its claims, pay its debts and obligations and distribute its remaining assets to those lawfully entitled thereto and report such proceedings from time to time and finally to the court for its approval;

(b) The procedure as to such liquidation shall in all respects comply with the procedure now existing, or hereafter provided by law for the liquidation of State Banking Institutions, so far as such proceedings are applicable;

(c) In the event no provision of law is applicable in any given case, or instance, then the Commissioner shall adopt such reasonable procedure as will in his sound judgment expedite such liquidation and winding up in a fair and equitable manner;

(d) Any person aggrieved by any order, ruling or act whatsoever in the progress of such liquidation, shall have the right of appeal to the court having jurisdiction for a review of such order, ruling or act. Such review shall be by petition by complainant and answer by the Commissioner and shall be tried de novo and judgment required as in other civil cases. An appeal shall lie from such judgment as in other civil cases;

(e) No appeal for review shall be permitted to the court unless the petition therefor be filed within twenty (20) days from the order, ruling or act complained of;

(f) The Commissioner shall perform the duties here imposed as a part of his official duties as Banking Commissioner of Texas, without other compensation than the salary fixed by law, but he shall be authorized to employ all such special agents, attorneys, assistants and help, and incur such expenses as may be reasonable and necessary, and to fix the compensation and amount thereof, subject to the approval of the court from time to time as reported by the Commissioner, such compensation and expenses to be paid out of the funds of such association being liquidated; provided, however, the Commissioner may appoint the general manager of the Federal Savings and Loan Insurance Corporation as his agent in the liquidation of any association being liquidated where the association's shares or share accounts are insured by the Federal Savings and Loan Insurance Corporation;

(g) The Commissioner shall also pay to the State Treasurer of Texas for the General Fund of the State, from the funds of such association in liquidation, a sum or sums of money in lieu of examination fees equal to the estimated examination fees for the period of such liquidation had such association not closed;

(h) Upon approval of the final report of liquidation by the Commissioner, said report shall be presented to the court and the court shall enter such order, judgment and decree as may be necessary. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

**Art. 881a—21. Bonds of officers and employees**

Every officer, director, employee, or agent handling or having the custody or charge of funds, securities, books or records belonging to such association, shall, before entering upon the discharge of his duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such building and loan association conditioned upon the payment to the association of such pecuniary loss as the association may sustain for money or other valuable securities embezzled, wrongfully abstracted or willfully misapplied by any such officer or employee in the course of his employment as such or in the course of his employment in any other position in such association, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position. Such bond shall be made by a surety corporation authorized to do business as such in this State. The form and amount of such bond and the solvency of such surety corporation shall be subject to the approval of the Banking Commissioner of Texas; provided that in lieu of individual bonds, a blanket bond covering all active officers and employees of such association may be executed, subject to the same provisions as to approval of surety, amount and form specified herein. The board of directors may require any other bond or bonds in addition to that herein required, at their discretion. Officers of associations who do not handle the association's funds or securities or draw a salary shall not be required to give bond. Bonds shall be executed in duplicate—original and one copy shall be filed with the Banking Commissioner of Texas; the other copy shall be retained by an officer or custodian of the association. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

This article was also amended by Acts 1939, 46th Leg., p. 74, § 1, see art. 881a—21, post.

**Art. 881a—21. Bonds of officers and employees**

Every officer, director, employee, or agent handling or having the custody or charge of funds, securities, books or records belonging to such association, shall, before entering upon the discharge of his duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such building and loan association conditioned upon the payment to the association of such pecuniary loss as the association may sustain for money or other valuable securities embezzled, wrongfully abstracted or wilfully misapplied by any such officer or employee in the course of his employment as such or in the course of his employment in any other position in such association, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position. Such bond shall be made by a surety corporation authorized to do business as such in this State.

The amount of such bond and the solvency of such surety corporation shall be subject to the approval of the Banking Commissioner of Texas, and such bond shall be made upon forms prepared by the Banking Commissioner of Texas; provided, that in lieu of individual bonds, a blanket bond covering all active officers and employees of such association may be executed, subject to the same provisions as to approval of surety,

amount and form specified herein. The board of directors may require any other bond or bonds in addition to that herein required, at their discretion. Officers of associations who do not handle the association's funds or securities or draw a salary shall not be required to give bond. Bonds shall be executed in duplicate, original, and one copy shall be filed with the Banking Commissioner of Texas; the other copy shall be retained by an officer or custodian of the association; provided, such bond shall not be required of any officer or employee of any Building and Loan Association which carries fidelity insurance upon such officer or employee in an amount and upon conditions approved by the Banking Commissioner. As amended Acts 1939, 46th Leg., p. 74, § 1.

Effective May 23, 1939.

Section 2 of the amendatory Act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergen-

cy and provided that the act should take effect from and after its passage.

This article was also amended by Acts 1939, 46th Leg., p. 76, § 1, see art. 881a—21, ante.

#### Art. 881a—22. Married women and minors may subscribe and invest

Married women and minors may subscribe for and purchase and become the owners of shares or share accounts in any building and loan association organized under the laws of this State, or in any Federal savings and loan association domiciled in this State, and may hold, pledge, hypothecate, control, transfer, and withdraw the same in all respects as a feme sole, or as a person who has reached his majority, without the consent or joinder of the husband of the married woman, or without the necessity of the appointment of a guardian for such minor. Any payment to a married woman or a minor by any such building and loan association in connection with said shares or share accounts shall be valid and binding on all parties, and a receipt or acquittance signed by a married woman without the joinder of her husband or by a minor, shall be a valid and sufficient release and discharge of any such association for any payment on such shares or share accounts, or delivery of rights of such married woman or minor.

Provided, that in the case of a minor, if any parent or guardian of such minor should not desire the minor to have authority to pledge, hypothecate, control, transfer and withdraw the shares or the value thereof, such fact may be made known to the association in writing, duly acknowledged by an executive of the association, in which event the right to pledge, hypothecate, control, transfer and withdraw the same during the minority of such minor shall not be exercised except with the joinder of such parent or guardian. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

#### Art. 881a—23. Joint shares

Shares or share accounts issued by any building and loan association organized under the laws of this State, or by any Federal savings and loan association domiciled in this State, in the name of two or more persons, or to two or more persons or the survivor of either, may be withdrawn on the signature of either party to whom such shares or share accounts were issued, and no recovery shall be had against such association for amounts so paid. When shares or share accounts are issued in the name of two or more persons or in the name of their survivor, the survivor or either party shall have power to act in all matters relating to such shares or share accounts, whether the other person or persons named in such shares or share accounts be living or dead. Such a joint account shall create a single membership in such association, and the

repurchase or withdrawal value of shares or share accounts issued in joint names and dividends thereon, or other rights relating thereto, may be paid or delivered in whole or in part, to any of such persons who shall make requests therefore, whether the other person or persons be living or dead. The payment or delivery to any such person, on a receipt or acquittance signed by any such person, to whom any such payment or any such delivery of rights is made, shall be a valid and sufficient release and discharge of any such association for the payment or delivery so made. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—23, ante.

#### Art. 881a—24. Trust funds

Administrators, executors, guardians, trustees or other fiduciaries, may in such capacity for a named beneficiary, acquire and hold shares or share accounts in any building and loan association organized under the laws of this State, or in any Federal savings and loan association domiciled in this State, and shall have the same rights and be subject to the same obligations, privileges and remedies as other shareholders and members. Administrators, executors, guardians, trustees, or other fiduciaries, may invest funds in their hands, as such, for a named beneficiary, in the obligations of any Federal Home Loan Bank, or in the obligations of the Federal Savings and Loan Insurance Corporation. Provided, that where under the laws of Texas, administrators, executors, guardians, trustees and other fiduciaries are required to obtain an order of the probate court to make investments, then such order shall be entered by the probate court before such fiduciaries are authorized to make the investments provided for in this section.

Any Texas corporation, including any insurance company organized under the laws of this State, or any insurance company doing business in this State under a permit, may invest any of its funds in the shares or share accounts of any building and loan association organized under the laws of this State, or in the shares or share accounts of any Federal savings and loan association domiciled in this State, and any such investments made by insurance companies shall be eligible investments for tax reducing purposes under Article 7064 and Article 4769 of the Revised Civil Statutes of 1925, as amended. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

#### Art. 881a—27. Restrictions as to deposit accounts

No building and loan association shall carry or have upon its books at any time any demand, commercial or checking account, or any credit to be withdrawn upon the presentation of any negotiable check or draft, and all investment moneys received by any such association shall represent a payment made upon shares of stock or share accounts; provided, however, that such associations may accept money from members to be used for the purpose of paying taxes, assessments and insurance premiums on the property on which the association has a lien. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

## Art. 881a—29. Articles of Association

Any number of persons, not less than five (5), who are citizens of this State, desiring to incorporate a building and loan association may, by complying with the provisions of this Act<sup>1</sup> and entering into articles of association, become a corporate body. Such articles of association shall be signed by the persons associating and acknowledged before some person authorized by the laws of this State to take acknowledgments to deeds, and shall set forth:

1. The name assumed by the association, which shall not be the name assumed by any other association incorporated under this law, nor so similar as to be liable to mislead. The name of the associations hereafter chartered shall terminate with the words "building and loan association" or "savings and loan association," and associations heretofore chartered may by amendment to their charter change the name of their associations so as to provide for such terminology.

2. The purpose for which the association is formed.

3. The name of the city, town or village and the county wherein the principal place of the business of the association is to be located, and which must be within the State of Texas.

4. The amount of its authorized capital stock, which shall be divided into shares of the maturity or par value of not less than One Hundred (\$100.00) Dollars each.

5. The names of the incorporators; their respective occupations and residence address, and a statement of the number of shares subscribed by each, and the amount of cash payment made upon such shares or share accounts by each.

6. The amount of capital actually paid in which shall in no event be less than One Thousand (\$1000.00) Dollars if the home office of the association is located in a town having a population of less than ten thousand (10,000) inhabitants, and which shall not be less than Two Thousand (\$2000.00) Dollars if the home office of the association is located in a city having a population of more than ten thousand (10,000) and less than fifty thousand (50,000) inhabitants, and which shall not be less than Ten Thousand (\$10,000.00) Dollars if the home office of the association is located in a city having a population of more than fifty thousand (50,000) and less than one hundred and fifty thousand (150,000) inhabitants, and which shall not be less than Twenty-five Thousand (\$25,000.00) Dollars if the home office of the association is located in a city having a population of one hundred and fifty thousand (150,000) or more inhabitants. The population of all towns and cities for the purpose of fixing the minimum paid-in capital stock of the association under this section shall be ascertained by reference to the last preceding Federal Census. All payments for shares or share accounts of required paid-in capital stock must be in lawful money of the United States and must be in the custody of the persons named as the first board of directors.

7. The term of corporate existence which shall not exceed fifty (50) years, but which period may be extended as provided in this Act.

8. The number of directors of the association shall not be less than five (5) nor more than twenty-one (21), and the names of the incorporators shall be its first directors until the first annual meeting. The incorporators named as directors must possess the qualification of directors specified in Section 33 of this Act.<sup>2</sup> As amended Acts 1939, 46th Leg., p. 76, § 1.

<sup>1</sup> Articles 881a—1 to 881a—68; Pen.Code arts. 1136a—1 to 1136a—9.

<sup>2</sup> Article 881a—32.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

## Art. 881a—34. Membership; liability; capital definition; lien on accounts

A member of a building and loan association shall be any person, persons, firm, co-partnership, association or corporation owning any of the shares of stock or share accounts of a building and loan association, or holding a certificate of membership as a borrower from any such building and loan association. The manner of voting and the extent of the voting privilege shall be provided in the by-laws of each association, and voting may be by proxy. In the consideration of all questions requiring action by the members the by-laws may provide that each shareholder shall be entitled to cast one vote for each share owned or may provide that each shareholder shall be entitled to cast one vote for each One Hundred (\$100.00) Dollars, or fraction thereof, of the withdrawal value of his shares; and each holder of a share account shall be permitted to cast one vote for each One Hundred (\$100.00) Dollars, or fraction thereof, of the participation value of his share account. A borrowing member shall be entitled, as a borrower, to cast one vote, and to cast the number of votes to which he may be entitled as the holder of shares or a share account. Membership shall continue until such shares or share accounts have matured and been paid, withdrawn, transferred, retired, or forfeited, or until the loan has been completely repaid. The payments made to any such association upon shares issued by it shall be called "dues." The capital of an association shall consist of the aggregate of accumulated payments actually made upon the shares and upon share accounts by its members, plus dividends credited to such shares and accounts, either individually or by series, less repurchase and withdrawal payments. The capital shall be accumulated only by payments by members upon shares and share accounts and earnings on accounts, as provided in this Act.<sup>1</sup> It shall be unlawful for any association to represent itself as having, either by newspaper advertising, letter, circular, or otherwise, a greater capital than that herein described. The value of the participation in the capital of each share or share account held by a member shall be the aggregate of payments made upon such share or share account, plus dividends credited thereto, less repurchase or withdrawal payments, or other lawful charges. Every share issued by such association shall have a paid-up or matured or par value of not less than One Hundred (\$100.00) Dollars each. No preference between shareholders and/or accountholders shall be created with respect to the payment of withdrawals or the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up of an association except such preference as has been created by the Building and Loan Act where associations issue or have issued and have outstanding reserve fund or permanent shares. No association shall have the power to contract with respect to the capital or participation in the capital in a manner inconsistent with the provisions of this Act. The members of an association shall not be responsible for any losses which its capital shall not be sufficient to satisfy, and the shares or share accounts shall not be subject to assessment, nor shall the members be liable for any unpaid installments on their share subscriptions. To secure loans to members, an association shall have a lien, without further agreement or pledge, upon all accounts owned by the borrower. Upon default upon any loan, the association may, without any notice to, or consent of the borrower, cancel on its books all or any accounts owned by the borrower and apply the value of such accounts in payment on account of the loan. An association may by written instrument waive its lien in whole or in part. Any association may take the pledge of an account or accounts of the

association owned by a member other than the borrower as additional security for any loan secured by an account or by an account and real estate, or as additional security for any real estate loan. As amended Acts 1939, 46th Leg., p. 76, § 1.

1 Articles 881a—1 to 881a—68; Pen.Code, arts. 1136a—1 to 1136a—9.

Emergency section. See note under article 881a—7, ante.

Effective May 8, 1939.

#### Art. 881a—36. Class of shares

All building and loan associations, when provided in its by-laws, may issue different classes of shares and share accounts as provided herein:

(a) Installment shares, (1) with participation in all dividends that may be declared by such association, and upon which a regular payment of dues of not less than Twenty-five (25¢) Cents or more than Two (\$2.00) Dollars per One Hundred (\$100.00) Dollars share per month shall be made at stated periods expressed by its by-laws, until such shares reach their matured value, or are withdrawn, retired or forfeited; (2) or with no participation in such dividends, the dues being payable thereon in regular amounts at stated periods expressed by its by-laws, and being immediately or at stated periods applied, in reduction of a debt due to the association from the holder thereof in accordance with a direction given to him.

(b) Thrift or optional-payment shares, which shall participate in the dividends apportioned by the association and shall be credited therewith at a rate not less than sixty (60%) per centum of the rate of dividend apportioned and credited to installment shares, as the by-laws shall provide, and upon which dues shall be paid in such sums and at such times as the holder thereof may elect until the shares reach their matured value, are withdrawn or retired.

(c) Advance-payment, accumulative or pre-paid shares upon which a single payment of dues to the amount of fifty (50%) per centum or more of the maturity value of such shares shall be paid at the time the shares are issued. The dividends on these shares shall not exceed the dividends apportioned and credited to installment shares, and the whole or a part of the dividends apportioned to these shares shall be credited to them until such shares are matured, withdrawn or retired. Any balance of such dividends not so credited shall be paid in cash to the holder of such shares, at regular dividend paying periods.

(d) Fully-paid or income shares upon which a single payment of dues amounting to the par or maturity value shall be paid at the time when such shares are issued. The dividends on these shares shall be paid in cash at a rate not exceeding at any time the rate at which dividends are apportioned and credited to installment shares, and providing that agreements may be entered into by and between any such association and any of its members holding fully-paid or income shares, as the by-laws shall provide, whereby said members waive participation in the general profits of such association.

(e) Juvenile shares may be issued in the name of any minor. Such shares shall be held for the exclusive right and benefit of the minor and free from the control or lien of any other persons. The dues paid upon these shares, together with the dividends credited thereto, may be withdrawn in whole or in part by the person in whose name they were issued during his minority and his receipt or acquittance shall be a valid and sufficient release and discharge to the association for such accumulated dues, together with the dividends credited thereon, or any part thereof. Juvenile shares shall not be subject to any membership or withdrawal



fees of any nature, or to fines for failure to pay dues punctually, nor shall the holder thereof be required to make regular or specific payments. Such shares shall not be chargeable with losses of any kind, nor shall they entitle the holder to vote at any meeting of the shareholders. Such shares may be credited with dividends at a rate not less than sixty (60%) per centum of the rate of dividends apportioned and credited to installment shares, as the by-laws shall provide. The matured value of all the juvenile shares issued by an association shall not exceed in the aggregate at the time of issue, twenty-five (25%) per centum of the aggregate matured value of existing shares of all other classes.

(f) Reserve fund or permanent stock, which when sold may not be withdrawn, except as hereafter provided, until after all liabilities of the association have been satisfied in full, including the full book value of all other types or classes of shares and share accounts, and which may receive as dividends all the earnings of the association after expenses have been paid and the dividends declared by the directors upon other classes of shares and share accounts have been paid or credited; which such stock if allowed by the by-laws must be fully paid for in advance, and against which the association may not make any loans; and which fully paid reserve fund or permanent stock must at all times be at least five (5%) per cent of the gross assets of the association, but not less than Twenty-five Thousand (\$25,000.00) Dollars; but which shall not be required to exceed Two Hundred and Fifty Thousand (\$250,000.00) Dollars; provided that associations whose shares are insured by the Federal Savings and Loan Insurance Corporation may retire in whole or in part such reserve or permanent stock heretofore issued, when such association is authorized to do so by a majority vote of its members, provided that the basis of such retirement shall have been approved by the Banking Commissioner of Texas; and provided further that no such association shall be authorized to retire its reserve fund or permanent stock until a consent to such retirement upon the part of the Federal Savings and Loan Insurance Corporation has been filed in writing with the Banking Commissioner of Texas.

(g) Share accounts may be issued by associations subject to provisions of this Act. Share accounts of One Hundred (\$100.00) Dollars or multiples thereof, shall be known as "investment share accounts." All other share accounts shall be known as "savings share accounts." Payments upon share accounts shall be called "share payments." Share account holders are deemed to be members of the association in which they hold accounts in the same manner and to the same proportionate extent as are shareholders, and no creditor and debtor status or preference in earnings or assets is authorized to be created by the authority to issue share accounts, but the status of "member" shall continue until such share accounts have been withdrawn and paid, transferred or retired. The participation value in the share capital of each share account held by a member shall be the aggregate of payments made upon such share account and dividends credited thereto, less repurchase or withdrawal payments. "Savings share accounts" shall be entitled to the same rate of dividends as may be paid by the association upon Thrift or Optional share accounts, and "investment share accounts" shall be entitled to the same rate of dividend paid by the association upon Fully Paid or Income Shares. Dividends to those holding savings share accounts and those holding investment share accounts shall be provided for at the same time dividends are declared for the different classes of shares provided for in this section. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

**Art. 881a—37a. Loans secured by shares; limitation on amount**

Until September 1, 1943, any building and loan association organized under the laws of this State may make ninety (90%) per cent loans secured by its own shares or share accounts and may invest its funds without limitation as to amount loaned to any one borrower, or period of maturity, in real estate loans secured by mortgage, deed of trust, or other instrument creating or constituting a first lien upon improved real estate situated in this State, where such loan does not exceed ninety (90%) per cent of the appraised valuation of such property and where the loan is insured by the Federal Housing Administrator. Acts 1929, 41st Leg., 2nd C.S. p. 100, ch. 61, § 38a; added Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

**Art. 881a—37b. Insurance under National Housing Act**

Every association eligible for insurance under the provisions of Title IV of the National Housing Act, approved June 27, 1934, as now or hereafter amended,<sup>1</sup> is authorized to do all things necessary to obtain, continue, or terminate such insurance, and every action heretofore taken by any such association in connection with such insurance is hereby ratified and confirmed. All associations having the insurance protection provided by Title IV of the National Housing Act are hereby designated as "insured association." Acts 1929, 41st Leg., 2nd C.S. p. 100, ch. 61, § 38b; added Acts 1939, 46th Leg., p. 76, § 1.

<sup>1</sup> 12 U.S.C.A. §§ 1724—1730.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

**Art. 881a—41. Dividends and reserve**

The gross earnings of every building and loan association shall be ascertained at least semi-annually, from which shall be deducted a sufficient amount to meet the operating expenses of such association, and from said earnings only shall such expenses be paid. If the reserve fund shall not equal five (5%) per cent of the capital at the time of each apportionment of profits, hereinafter provided, the directors shall, before apportioning profits, set aside, as a reserve fund, not less than five (5%) per cent of the net profits accruing since last prior apportionment, and shall continue to do so until said fund shall amount to at least five (5%) per cent of the capital of the association. Said reserve fund shall at all times be available to meet losses arising from any source, including depreciation of securities. After providing for the expenses and obligations of the association and the reserve fund as aforesaid, the residue of such earnings shall on June 30th and December 31st of each year, and at such other times as the by-laws provide, be transferred and apportioned to the credit of the shareholders and share account holders as the association by its by-laws shall provide. All shareholders and account holders of the same class or series shall participate equally in dividends pro-rata to the participation value of their respective accounts; provided that no association shall be required to pay or credit dividends on accounts of Five (\$5.00) Dollars or less. Payments of net earnings to shareholders and share account holders are "dividends" and shall not be referred to as "interest." Except as herein provided, dividends shall be declared on the withdrawal value or participation value of each share

or share account at the beginning of the dividend period plus payments thereon made during the dividend period (less amounts withdrawn or repurchased and filed for withdrawal or repurchase, which for dividend purposes shall be deducted from the value of the account at the last previous dividend period) computed at the dividend rate for the time invested; provided that the date of investment shall be the date of the actual receipt by the association of a payment on an account, except that the board of directors may fix a date, which shall not be later than the tenth of the month, for determining the date of investment. The reserve fund of not less than five (5%) per cent of the net profits accruing since last prior apportionment herein required to be provided may be considered identical with, and not supplemental to, the reserves required to be set up by insured associations by the Federal Savings and Loan Insurance Corporation. As amended Acts 1939, 46th Leg., p. 76, § 1.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

**Art. 881a—57a. Rights, powers, exemptions and immunities of association and its shareholders**

Every Federal Savings and Loan Association incorporated under the provisions of Home Owners' Loan Act of 1933, as now or hereafter amended,<sup>1</sup> domiciled in the State of Texas, and the holders of shares or accounts issued by any such association shall have all the rights, powers, and privileges, and shall be entitled to the same exemptions and immunities to which building and loan associations organized under the laws of this State and holders of the share or share accounts of such associations are entitled. Acts 1929, 41st Leg., 2nd C.S. p. 100, c. 61, § 58a; added Acts 1939, 46th Leg., p. 76, § 1.

<sup>1</sup> 12 U.S.C.A. §§ 1461-1468.

Effective May 8, 1939.

Emergency section. See note under article 881a—7, ante.

**Art. 881a—65. Compliance with provisions of act essential**

No foreign building and loan association shall be permitted to do business in this State unless all the provisions of this Act<sup>1</sup> are fully complied with and all contracts made by such foreign building and loan associations while in default shall be absolutely void. Any building and loan association organized under the laws of a sister state upon being granted a permit to do business in Texas shall, while said permit is in force, enjoy all of the rights and privileges granted to building and loan associations organized under the laws of Texas and the stock of such foreign building and loan associations admitted to do business in Texas shall be eligible for purchase and investment the same as the stock of building and loan associations organized under the laws of Texas. All of the rules and regulations, and all the terms and conditions herein contained applicable to the operation of domestic companies, are hereby expressly made applicable to foreign companies under this Act. Any such association violating any of the provisions of this Act, or failing to comply with any of its provisions, shall be subject to a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars, such fine to be recovered by an action in the name of the State of Texas in any court of competent jurisdiction and, upon the collection thereof, the same shall be paid into the State Treasury. Foreign building and loan associations that are duly authorized to do a building and loan business in this State at the time of the taking effect of this Act shall have sixty (60) days from the date on which this Act

takes effect to comply with the provisions of this Act as set forth in Section 59;<sup>2</sup> provided, however, that the Banking Commissioner may, in his discretion, grant to any such association such extension of time as may, in his discretion, seem necessary or proper. As amended Acts 1939, 46th Leg., p. 87, § 1.

<sup>1</sup> Articles 881a—1 to 881a—68; Pen.Code, arts. 1136a—1 to 1136a—9.

<sup>2</sup> Article 881a—58.

Effective May 1, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

## TITLE 25—CARRIERS

### 6. REGULATION OF MOTOR BUS TRANSPORTATION

Art.

911d. Regulation of motor bus ticket brokers—Definitions [New].

#### [6. REGULATION OF MOTOR BUS TRANSPORTATION.]

#### Art. 911b. Motor carriers and regulation by Railroad Commission

*Application for permits; special permits; transfer or sale of permits*

##### Sec. 6.

(d) The Railroad Commission is hereby given authority to issue upon application to those persons who desire to engage in the business of transporting for hire over the highways of this State, livestock, mohair, wool, milk, livestock feedstuffs, household goods, oil field equipment, and used office furniture and equipment, timber when in its natural state, farm machinery, and grain special permits upon such terms, conditions, and restrictions as the Railroad Commission may deem proper, and to make rules and regulations governing such operations keeping in mind the protection of the highways and the safety of the traveling public; provided, that if this Act or any section, subsection, sentence, clause, or phrase thereof, is held unconstitutional and invalid by reason of the inclusion of this Subsection the Legislature hereby declares that it would have passed this Act and any such Section, Subsection, sentence, clause, or phrase thereof without this Subsection. [As amended Acts 1937, 45th Leg., p. 651, ch. 321, § 1.]

Amendment of 1937, effective May 13, 1937 declared an emergency and provided that the Act should take effect from 1937.

Section 2 of the amendatory Act of and after its passage.

(e) Any permit held, owned, or obtained by any motor carrier operating under the provisions of Subsection (d) of this Section may be sold, assigned, leased, transferred, or inherited; provided, however, that any proposed sale, lease, assignment, or transfer shall be first presented in writing to the Commission for its approval or disapproval and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease, or transfer is not in good faith or that the proposed purchaser, assignee, lessee, or transferee is not capable of continuing the operation of the equipment proposed to be sold, assigned, leased, or transferred in such a manner as to render the services demanded in the best interest of the public; the Commission in approving or disapproving any sale, assignment, lease, or transfer of any permit may take into consideration all of the requirements and qualifications of a regular applicant required in this Section, and apply same as necessary qualifications of any proposed purchaser, assignee, lessee, or transferee; provided, however, that in case a permit is transferred that the transferee shall pay to the Commission a sum of money equal to ten (10) per cent of the amount paid as a consideration for the transfer of the permit which sum of ten (10) per cent shall be deposited in the State Treasury to the credit of the Highway Fund of the State; provided, further, that any permit obtained by any motor carrier or by any assignee or transferee shall be taken and held subject to the right of the State at any time to limit,

restrict, or forbid the use of the streets and highways of this State to any holder or owner of such permit. Every application filed with the Commission for an order approving the lease, sale, or transfer of any permit shall be accompanied by a filing fee in the sum of Ten Dollars (\$10) which fee shall be in addition to other fees and taxes and shall be retained by the Commission whether the lease, sale, or transfer of the permit is approved or not. [As added Acts 1937, 45th Leg., p. 645, ch. 316, § 1.]

Effective 90 days after May 22, 1937,  
date of adjournment.

Section 2 of this act repeals all conflict-  
ing laws and parts of laws. Section 3 de-

clared an emergency and provided that  
the act should take effect from and after  
its passage.

(f) Any contract carrier permit held, owned, or obtained by any motor carrier operating under the provisions of Section 6 may be sold, assigned, leased, transferred; or inherited; provided, however, that any proposed sale, lease, assignment, or transfer shall be first presented in writing to the Commission for its approval and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease, or transfer is not in good faith or that the proposed purchaser, assignee, lessee, or transferee is not capable of continuing the operation of the equipment proposed to be sold, assigned, leased, or transferred in such a manner as to render the services demanded in the best interest of the public; the Commission in approving or disapproving any sale, assignment, lease, or transfer of any permit may take into consideration all of the requirements and qualifications of a regular applicant required in this Section, and apply same as necessary qualifications of any proposed purchaser, assignee, lessee, or transferee; provided, however, that in case a permit is transferred that the transferee shall pay to the Commission a sum of money equal to ten (10) per cent of the amount paid as a consideration for the transfer of the permit which sum of ten (10) per cent shall be deposited in the State Treasury to the credit of the Highway Fund of the State; provided, however, that any permit obtained by any motor carrier or by any assignee or transferee shall be taken and held subject to the right of the State at any time to limit, restrict, or forbid the use of the streets and highways of this State to any holder or owner of such permit. Every application filed with the Commission for an order approving the lease, sale, or transfer of any permit shall be accompanied by a filing fee in the sum of Ten Dollars (\$10) which fee shall be in addition to other fees and taxes and shall be retained by the Commission whether the lease, sale, or transfer of the permit is approved or not. Added Acts 1939, 46th Leg., p. 89, § 1.

Effective May 8, 1939.

Section 2 of the amendatory Act of 1939  
declared an emergency and provided that

the Act should take effect from and after  
its passage.

**Commission to hear applications, complaints, and compel attendance of witnesses; examiner to hear applications assigned by commission and report thereon**

Sec. 14 (a). The Commission shall have the power and authority under this Act to hear and determine all applications of motor carriers; to determine complaints presented to it by such carrier, by any public official, or by any citizen having an interest in the subject matter of the complaint, or it may institute and investigate any matter pertaining to motor carriers upon its own motion. The Commission, or any member thereof, or authorized representative or Examiner of the Commission, shall have power to compel the attendance of witnesses, swear witnesses,

take their testimony under oath, make record thereof, and if such record is made under the direction of a Commissioner, or authorized representative or Examiner of the Commission, a majority of the Commission may, upon the record, render judgment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this Act to do and perform all necessary things to carry out the purpose, intent, and provisions of this Act, whether herein specifically mentioned or not, and to that end may hold hearings at any place in Texas which it may designate.

(b). To expedite the hearing and disposition of applications, the Examiner or authorized representative of the Commission shall have authority under orders of the Commission to hear applications which may be assigned to him by the Commission; after the hearing of an application has been concluded by such representative or Examiner, it shall be his duty promptly to make a written report to the Commission recommending disposition of said application. Such report and recommendation shall be accompanied by a brief narrative statement of the evidence, and shall contain such other information as such representative or Examiner may think advisable, or as may be required by the Commission. Unless required by the Commission, it shall not be necessary for the reporter to transcribe said evidence in full, but it shall be sufficient to make a brief narrative statement giving the correct summary of such evidence; provided, however, the Commission shall have the authority to require said evidence, or any part thereof, to be transcribed in full if deemed advisable or necessary. [As amended Acts 1937, 45th Leg., p. 505, ch. 255, § 1.]

Amendment of 1937, effective May 3, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

Senate Concurrent Resolution # 65, p. 1552, 45th Leg., reads as follows: "Resolved, By the Senate of the Legislature of the State of Texas, the House of Representatives concurring, that the Motor Carrier Act, and amendments thereto, of this State, shall be construed, pending further legislative enactment with reference thereto, to mean that it shall not be necessary for a private carrier to procure a permit from the Railroad Commission of Texas to transport his own goods, wares, and merchandise in his own motor vehicles over the highways of this State; that it was not the intention of the Legislature in enacting the Motor Carrier Act of this State, and amendments thereto, to include the regulation of motor vehicles upon the highways of this State owned by persons, firms, and

corporations and operated in the transportation of goods, wares, and merchandise owned by the owner of said vehicles; and, be it further

"Resolved, That the fact that a seller of merchandise who transports such merchandise from one place to another in the motor trucks owned by the seller, who adds to the sale price of such merchandise at point of delivery a charge to cover a part or all of the cost of transportation, is not engaged in transporting for hire, as that term is defined in the Motor Carrier Act of this State, and is not subject to the provisions of said Act nor to any rule or regulation promulgated pursuant thereto by the Railroad Commission of the State of Texas; and, be it further

"Resolved, That a copy of this Resolution be published to the Railroad Commission of Texas, the law enforcement agencies and the courts of this State."

Approved May 15, 1937.

#### Art. 911d. Regulation of motor bus ticket brokers—definitions

Section 1. (a) That the term "corporation" when used in this Act means a corporation, company, association or joint stock association.

(b) The term "person" when used in this Act means an individual, firm, or co-partnership.

(c) The term "motor bus company" when used in this Act means every corporation or person as herein defined, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, con-

trolling, operating, or managing any motor propelled passenger vehicle, not usually operated on or over rails, and engaged in the business of transporting persons for compensation or hire over the public highways within the State of Texas, under certificates of public convenience and necessity issued by the Railroad Commission of Texas, whether operating over fixed routes or fixed schedules or otherwise; provided further, that the term "motor bus company" as used in this Act shall not include corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled passenger vehicles operated wholly within the limits of any incorporated municipal corporation, town or city and the suburbs thereof, whether separately incorporated or otherwise.

(d) The term "Commission" when used in this Act means the Railroad Commission of the State of Texas.

(e) The term "broker" as used in this Act shall mean any person, firm, corporation or association of persons whatsoever, who or which, as principal or agent, shall for compensation, sell or offer for sale, transportation for passengers of any character, or who or which make any contract, agreement, or arrangement to provide, furnish, or arrange for such transportation, directly or indirectly, whether by selling of tickets or of information, or the introduction of parties where a consideration is received or otherwise, or who or which shall hold himself or itself out by advertisement, solicitation or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, information or introduction; provided, however, the term "broker" shall not apply to or include any such person, firm, corporation or association of persons whatsoever unless and until the Railroad Commission of Texas, after notice and hearing, shall have determined, from credible and competent evidence introduced before it or before some person authorized by present laws to conduct hearings for it, that such person, firm, corporation or association of persons has so conducted himself or itself in the course of the acts, transactions and things mentioned in this Sub-section (e) as to bring about a reasonably continuous or customary competition with one or more "motor bus companies," holding one or more certificates of convenience and necessity, duly and properly issued by the Railroad Commission of Texas under Chapter 270, General Laws Fortieth Legislature, 1927, as amended at the First Called Session of the Forty-first Legislature and any and all present and future amendments thereto;<sup>1</sup> provided however, a carrier of passengers by rail shall never be considered a broker.

(e½) The Railroad Commission of Texas shall have and it is hereby given the power and authority, either upon motion of any interested person or upon its own motion to investigate through a public hearing any person, firm, corporation or association of persons thought to be or charged with being a "broker" as that term is defined herein and to make a determination of the fact question as to whether said status of "broker" actually exists.

The person, firm, corporation, or association of persons sought to be so investigated shall be given at least ten (10) days notice by mail of such hearing and all motor bus companies probably or possibly affected by the asserted competition of such person, firm, corporation or association of persons shall likewise be given the same character of notice by mail and shall be given an opportunity to be heard; and, in addition, the owner or owners of all other existing passenger transportation facilities serving all or a portion of the territory thought to



be or charged with being served by the person, firm, corporation, or association of persons under investigation shall be given the same character of written notice and, they along with any other interested party, shall be given an opportunity to be heard. The notice mentioned shall be not less than ten (10) days exclusive of the day of mailing.

Before the Commission determines that a person, firm, corporation or association of persons is a "broker" as that term is defined herein, it shall make findings, based on competent and credible testimony that the said person, firm, corporation or association of persons has customarily or with reasonable continuity brought about competition in the transportation of persons for hire between one or more motor bus companies, which have theretofore been duly and properly issued one or more certificates of public convenience and necessity, on the one hand, and other motor vehicles, not so certificated, on the other hand.

(f) The term "license" as used herein means a license issued to a broker.

1 Article 911a; Pen.Code, art. 1690a.

#### Certain sales prohibited

Sec. 2. It shall be unlawful for any broker or anyone else to sell any ticket or tickets for the transportation of passengers within this State over any motor bus company's line at any rates other than the rates legally authorized and approved by the Commission.

#### Broker's license required

Sec. 3. No broker shall for compensation sell or offer for sale, transportation for passengers of any character, nor make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation, directly or indirectly, whether by the selling of tickets, or of information, or the introduction of parties where a consideration is received or otherwise, nor shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts or arranges for such transportation or information unless such broker holds a broker's license issued by the Railroad Commission of Texas authorizing such activities; provided further that the provisions hereof shall not apply to transportation of passengers on steamship lines operating between ports of this State and ports of the United States and ports of any foreign company, and transportation of passengers of any authorized carrier or carriers operating in either interstate or intrastate transportation; and provided further that nothing herein contained shall in any manner affect the rights of private individuals as a mere incident to travel who are not brokers to enter into agreements or arrangements for transportation on a share-expense plan where in such negotiations or arrangements the services of an unlicensed broker, as herein defined, do not intervene or are not used.

#### License, to whom issued, etc.

Sec. 4. A broker's license may be issued to any qualified applicant therefor upon application to the Commission in such form as the Commission shall prescribe, authorizing the whole or any part of the operation covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the services proposed and to conform to the requirements, rules and regulations of the Commission promulgated hereunder, and within the limits hereof, and that the proposed service to the extent authorized by the license, is, or will be consistent with the public interest; otherwise, such application shall be denied. Any broker in bona fide operation when this Act takes effect

shall have a period of thirty (30) days thereafter within which to apply for a broker's license, and if such application be filed such broker, if in bona fide operation when this Act takes effect may continue such operation under such rules and regulations, as the Commission may prescribe within the limits of this Act, until such application be by the Commission determined.

#### **Nature and effect of license**

Sec. 5. The license herein provided for shall be personal in nature and shall not be sold, transferred, nor assigned. No broker shall be authorized to have more than one place of business, the location of which shall be designated in the license as issued by the Commission and no broker shall be authorized to change the location of his business without the approval of the Commission. If a broker dies, discontinues business for a period of thirty (30) days, or removes from the county where such license was issued, the license shall immediately become void and shall be by the Commission cancelled.

#### **Tariff rates applicable to brokers**

Sec. 6. All brokers in transporting or causing to be transported passengers on the highways of Texas shall be bound by the tariffs, fares and rates approved of by the Railroad Commission of Texas covering the transportation for hire of persons over the highways of Texas; and shall not, directly or indirectly, transport or cause to be transported over State Highways any person at a greater or lesser fare or rate than that approved of by the Commission save and except that any broker shall be allowed a reasonable brokerage for his services but said brokerage and all details and particulars in connection therewith, including who shall pay such brokerage, shall be first approved of by the Commission.

#### **Rules and regulations**

Sec. 7. The Commission shall have power, after proper notice and hearing, in a manner hereinafter more particularly set forth, to make, adopt and enforce any reasonable rules and regulations, and to enforce the same, which may be necessary in assisting it to determine just who are and who are not brokers and in enforcing observance of its duly authorized and approved rates, tariffs and fares and in inspecting and approving brokerage charges to be charged by brokers for their services as such and in seeing to it that passengers are not transported in vehicles and under circumstances wherein and whereunder they are unprotected against injury and damage to person and property during such transportation or as a proximate result thereof and in assisting it in otherwise exercising the powers expressly given it or necessarily implied from and by this Act.

#### **Broker's bond**

Sec. 8. Each broker, prior to the issuance of any license to him, shall file a bond or other security with the Commission and shall procure its approval of the same conditioned in such fashion that the State of Texas, through its Attorney General or any District or County Attorney, may proceed against said bond or other security and the principals and sureties thereon for a recovery of all money representing the difference between the money actually paid by any and all persons for such transportation arranged for by the broker, on the one hand, and the money which should have been paid under the applicable tariffs, rates and fares theretofore approved of by the Commission, on the

other hand, plus a penalty of Twenty-five (\$25.00) Dollars for each person so transported at the instigation of the broker at a lesser or greater charge or fare than the Commission's duly and properly approved tariff, rate or fare; and further conditioned in such fashion that the Attorney General or any District or County Attorney may similarly proceed for a recovery of all money representing the difference between the money actually collected by said broker as for his brokerage, on the one hand, and the money which should have been collected by him as for brokerage under the Commission's duly approved rate of brokerage, on the other hand, plus a penalty of Twenty-five (\$25.00) Dollars on each passenger connected with the broker, but with respect to whom the broker failed, refused or neglected to collect the proper brokerage previously fixed or approved of by the Commission. All money recovered, either as differences between money actually collected and that which should have been collected as penalties under this Section 8, shall become the property of, and be owned by, the State of Texas, as a penalty and not as a forfeiture.

**Vehicles to be bonded for damages due to injuries**

Sec. 9. No broker shall have any part in transporting, or causing to be transported, any person, for hire, over the highways of Texas, except in a vehicle and under circumstances wherein and whereunder such passenger and his heirs, his estate and his beneficiaries are fully protected by security, bond or insurance, to be approved by the Commission, against damage, loss and injury resulting from loss of or damage to property possessed by such passenger during such transportation, or as a proximate result thereof; and, as well, against damage, loss and injury resulting from such passenger's personal injury or death during such transportation; or as a proximate result thereof; and, if any such passenger, his heirs, his estate or his beneficiaries, be damaged or injured in his person or rights or property as a result of such passenger's being transported in such unprotected manner, then those entitled to a recovery by reason of such unprotected transportation, in the event they cannot make themselves whole by proceeding against the actual hauler or carrier, shall be entitled to proceed against the broker, insurer, bond or other security and the principal and sureties thereon to the extent necessary to make them and each of them whole; and each broker's bond, insurance or other security shall be so conditioned; and each broker shall be required to furnish or renew such insurance, bond or other security as may be, and to the extent necessary from time to time, and as may be ordered by the Commission to effectuate all of the protection for the State and for such other persons as are mentioned in this Section; and such insurance, bond or other security shall be further conditioned in such fashion that, if and when any passenger, through no fault of his own, has not been carried over the route called for by the agreement with the broker, or has not been carried all of the way to the destination agreed upon with the broker, then the party or parties injured or damaged by such deviation from route or by such failure to carry the passenger through to his destination, in the event they cannot make themselves whole by proceeding against the actual hauler or carrier, shall be fully protected by, and shall be allowed to proceed against, the broker, insurance, bond or other security and the insurer, principal or sureties thereon to the extent necessary to make the injured or damaged party or parties whole.

**Powers of Commission concerning rules, etc.**

Sec. 10. The Railroad Commission of Texas shall have and it is hereby given power and authority to adopt, approve, promulgate and enforce rules and regulations to the extent necessary, and only to the extent necessary, to aid and assist it in carrying out the express and necessarily implied powers granted it by this Act; but before adopting, approving, promulgating or enforcing any such rules and regulations, a copy thereof shall be sent by mail to each person, firm, corporation and association of persons known or thought by the Commission to have an interest in the subject matter of such rules and regulations; and in addition such proposed rules and regulations shall be published on three successive days in a daily newspaper of general circulation in each of the Cities of San Antonio, Houston, Dallas, Fort Worth, El Paso, Texarkana, Amarillo and Brownsville, Texas, and in each such notice and publication the Commission shall give all interested persons, firms, corporations and associations of persons express notice that it intends to adopt, approve, promulgate, and enforce such proposed rules and regulations and that a public hearing will be held thereon in Austin, Texas, at a given hour and date, for the purpose of hearing any and all objections thereto and any and all evidence and statements and arguments in regard thereto and for the purpose of making any and all necessary changes, eliminations and amendments in and to such published and proposed rules and regulations; and in such notices and publications all interested parties shall be given notice to be and appear at the given time and place for the purpose of such a hearing. At any and all such hearings the Commission shall give all interested parties an opportunity to present evidence, statements and arguments for and against the adoption of the proposed rules and regulations. And the Commission shall adopt or reject such rules and regulations, in whole or in part, as it shall deem proper; but its action shall be reasonable, and shall be based upon the substantial effect of the record made at such hearing, or upon the substantial effect of its other records of which it may take notice under present laws. The hearing contemplated shall be held at least ten (10) days from the mailing of the notices exclusive of the day of mailing, and at least ten (10) days from the appearance of the last notice in said newspapers or either of them.

**Broker's records**

Sec. 11. Each and every broker shall keep an accurate record of each and every contract, agreement, or arrangement for transportation which he or it may make with every person traveling, or desiring to travel, with whom the broker may contract or arrange transportation, on such form and containing such information as the Commission may prescribe and require. Such record shall be open to inspection to any sheriff, constable, County or District Attorney, and to any officer, agent, inspector, or other employee of the Railroad Commission at all times. Such records shall not be destroyed until after the expiration of three (3) years, and then only after an order of the Commission authorizing the destruction thereof.

**Hearing and fee for license**

Sec. 12. No application for a broker's license shall be granted until after hearing thereof, notice of which shall be given to all motor bus companies serving the territory proposed to be served by applicant, and to the County Judge and District and County Attorney of the county in which applicant resides, at least ten (10) days prior to the date

of such hearing, at which hearing any interested party may appear and be heard. Each application for a broker's license shall be accompanied by a filing fee of Twenty-five (\$25.00) Dollars, which shall be payable to the State Treasurer at Austin, and shall be by the State Treasurer deposited in the State Treasury and credited to the fund known and designated as the "Motor Transportation Fund," and be used in administering this Act. Each person, firm, corporation, or association of persons holding a broker's license under the terms of this Act, shall on the first day of January of each and every year that such license is in effect, pay to the State Treasurer a fee of Twenty-five (\$25.00) Dollars, which shall be deposited in and become a part of the General Revenues of the State; and such brokers shall not be authorized to transact any business in any calendar year until such fee is paid, and if not paid on or before the first day of March of any year, such license shall be automatically cancelled.

#### **Powers of Commission, in general**

Sec. 13. The Commission shall have the power and authority under this Act to hear and determine all applications of brokers for a license; to determine complaints presented to it by brokers, by any public official or by any citizen having an interest in the subject matter of the complaints; or it may institute an investigation in any matter pertaining to brokers upon its own motion. The Commission, or any member thereof, or authorized representative of the Commission, shall have the power to compel the attendance of witnesses, swear witnesses, take their testimony under oath and make a record thereof, and if such record is made under the direction of a Commissioner, or authorized representative of the Commission, a majority of the Commission may, upon the record, render judgment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this Act to do and perform all necessary things to carry out the purpose, intent, and provisions of this Act, and to that end may hold hearings at any place in Texas which it may designate.

#### **Review of Commission's orders or decisions**

Sec. 14. The applicant for a broker's license, any motor bus company, or any other interested person, if he or it be dissatisfied with any decision, rule, order, act, or regulation adopted by the Commission, such dissatisfied person, association, corporation, or party may file a petition setting forth the particular objection to such decision, rule, order, act or regulation, or to either or all of them in the district court of the plaintiff's residence or principal place of business, against said Commission as defendant. Said action shall have precedence over all other causes on the docket, of a different nature, and shall be tried and determined as other civil causes in said court; either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause, and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this Section, the burden of proof shall rest upon the plaintiff, who must show by the preponderance of the evidence that the decisions, regulations, rules, orders, and acts are unreasonable and unjust to it or them. The Commission shall not be required to give any appeal bond

in any cause arising hereunder, and no injunction shall be granted against any order of the Commission without hearing, unless it shall clearly appear that irreparable injury will be done the complaining party if the injunction is not granted.

#### **Violation of act; penalty**

Sec. 15. Any person, corporation, or any officer, agent, servant, or employee of any such corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of this Act, or any rule, regulation, order or decree of the Commission promulgated under the terms of this Act, shall be guilty of a misdemeanor; and upon conviction thereof, shall be punished by a fine of not less than One Hundred (\$100) Dollars and not to exceed Two Hundred (\$200) Dollars, and the violations occurring on each day shall each constitute a separate offense. Any authorized inspector for the Railroad Commission, and all law enforcement officers of the State, shall have power and authority, and it shall be their duty, to make arrests for the violation of any of the provisions of this Act.

See, also, Penal Code act 1690d.

#### **Cancellation of license**

Sec. 16. The Railroad Commission may in its discretion, after ten days notice and a hearing, cancel any license issued under the provisions of this Act for the violation of this or any other statute of this State, the violation of any lawful order, rule or regulation promulgated by the Commission under authority hereof, or for any failure of any broker to discharge any and all claims or demands of any member of the public for which such broker may be legally liable, by reason of any act of such broker in selling, providing, procuring, contracting, or arranging for such transportation, information, or introduction under the terms of this Act.

#### **Repeal of conflicting laws**

Sec. 17. All laws and parts of laws in conflict herewith are expressly repealed.

#### **Severability**

Sec. 18. If any Section, sub-section, clause, sentence, or phrase of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of the Act. The Legislature hereby declares that it would have passed this Act and each Section, sub-section, clause, sentence, or phrase thereof, irrespective of the fact that any one or more of the Sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

#### **Declaration of Policy**

Sec. 19. The Legislature finds that there has grown up in this State a type of business in which transportation is sold or arranged for in various forms, consisting of the selling or giving of information with respect to travel and transportation, the introduction of parties, and various other methods and practices, which interferes with and obstructs the functions of the Railroad Commission of Texas in connection with its control of motor bus companies holding certificates of public convenience and necessity issued by said Commission, and which is hazardous and dangerous to the public health, morals and general welfare, and that passengers are often stranded by drivers of cars to whom they had paid money for transportation, and

other fees or commissions, for being brought into contact with the drivers of such cars, and that this often occurs when such passengers are far from home and friends and left to complete their journey any way they can; that passengers after beginning a journey are often required to pay additional money or buy supplies in order to complete their journey; that passengers are often carried over long and circuitous routes contrary to representations made to them; that there has developed a class of irresponsible persons who operate automobiles from place to place with no destination and no motive except to transport persons as passengers for hire, who have no insurance to protect a passenger for personal injury or loss or damage to property, and who are unable to respond in damages; that passengers are subjected to indignities and insults; that irregularities and abuses require the regulations and policing of broker's operations, and that such regulation is necessary in the interest of the health, moral and general welfare of the people of this State. Acts 1939, 46th Leg., p. 672.

Effective May 17, 1939.

Section 20 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to regulate brokers who sell transportation or who may make any contract, agreement or arrangement to provide, procure, furnish or arrange for transportation, furnish information relative to such transportation, or introduce parties wishing to engage in transportation; to require such brokers to have a broker's license; defining certain words and terms; providing for the issuance, also the cancellation, of such licenses by the Railroad Commission of Texas; fixing the conditions under which such licenses may be issued; providing that the Railroad Commission may make reasonable rules and regulations necessary to carry out the express powers granted to it and those necessarily implied from this Act; providing that said Commission must follow a certain procedure with respect to the adoption, approval, promulgation and enforcement of such rules and regulations; providing for hearings for all interested parties; requiring that all brokers furnish certain bonds, insurance or other securities; providing for reviews of orders of the Commission; providing penalties and declaring an emergency; providing for notice, hearing and procedure by said Commission with respect to the question as to who shall be considered brokers subject to this Act; providing that it shall be unlawful for broker or anyone else to sell transportation for passengers at less than rates fixed by said Commission; providing that it shall be unlawful for a broker to operate as such without first procuring a license issued by said Commission; excluding certain persons from the classification of brokers; providing for procedure to be followed by said Commission in the issuance of such brokers' licenses; making certain provisions with respect to certain brokers who may be operating as

such when this Act takes effect; providing for the nontransferability of such brokers' licenses; providing that such licenses shall become void under certain contingencies; providing for definite locations for the places of business of such brokers; providing that all brokers shall not charge less for transportation than the rate fixed or approved of by the Railroad Commission of Texas and shall have no part in such transportation except at rates approved of by said Commission; providing that said Commission may adopt and enforce rules and regulations necessary to determine who is and who is not a broker and in enforcing its duly approved rates and fares and brokerage charges to be charged by brokers and in seeing that passengers are not transported in such fashion as to leave them unprotected against damage to property and person; providing that each broker shall file bond or other security with the Commission conditioned in a certain way definitely set forth in this Act; providing for suits by the Attorney General or any District or County Attorney against such bond or other security, collect certain penalties and other monies in the event brokers bring about or cause rebates either in fares or in brokerage charges; providing that brokers shall file certain insurance with said Commission containing certain provisions for the benefit of the persons transported or caused to be transported by brokers; providing that it shall be unlawful for a broker to transport or cause to be transported any person in vehicles over State highways unless such passenger is fully protected by surety bond or insurance and giving such passenger, his heirs, estate and beneficiaries certain rights to recover on such security bond or insurance; providing that all brokers shall keep certain records, making other provisions with reference to such records; providing a procedure to be followed by the Railroad Commission and by applicants before it, with respect to the issuance of brokers' licenses; providing fees in connection with the issuance and granting of such brokers' licenses;

providing that said Commission shall have power to conduct certain hearings upon the application of certain persons; providing that the Commission or any member thereof shall have power to force attendance of witnesses, swear witnesses, take testimony and make certain decisions and render certain judgments and enter certain orders with respect to certain brokers; providing penalties for the violation of this Act or any rule, regulation, order or decree of said Commission promulgated in pursuance of this Act; providing that certain persons and officers shall have power to

make arrests for violation of this Act; providing that said Commission may cancel brokers' licenses, fixing the procedure to be followed in that connection; repealing all conflicting laws; preserving the validity of all parts of this law not declared to be invalid or unconstitutional; setting forth a declaration of policy, and, generally providing for the carrying out of said policy under the terms of this Act by the Railroad Commission of Texas and other officers of the State; and declaring an emergency. Acts 1939, 46th Leg., p. 672.



## TITLE 28—CITIES, TOWNS AND VILLAGES

Chap.

21. Housing [New].

## CHAPTER ONE—CITIES AND TOWNS

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| <p>Art.<br/>961b. Validation of Adoption of Provisions of Title [New].</p> <p>961b-1. Town or village under commission form of government having \$500,000 taxable property may adopt this title [New].</p> <p>974d. Validation of incorporation of cities of 600 to 2000 inhabitants incorporated since January 1, 1935 [New].</p> | <p>Art.<br/>974e. Procedure for annexation of unoccupied lands to cities or towns of 4,190 to 4,250 population [New].</p> <p>974e-1. Procedure for annexation of unoccupied lands to cities or towns of 1251 to 1259 population [New].</p> <p>974e-2. Procedure for annexation of unoccupied lands to cities of 20,520 to 20,540 population [New].</p> |
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## Art. 961b. Validation of Adoption of Provisions of Title

In every instance wherein an incorporated city, town, or village in all counties having a population of more than forty-six thousand, one hundred (46,100) and less than forty-six thousand, two hundred (46,200), according to the last preceding Federal Census, has attempted to accept the provisions and benefits of Title 28 of the Revised Civil Statutes of Texas of 1925, and has filed a copy of the resolution or ordinance accepting such Title for record in the office of the County Clerk of the county within which such city, town, or village is situated, the action of such city, town, or village is hereby authorized, ratified, confirmed, and validated; and each such city, town, or village is declared to have all the powers of cities and towns as provided in said Title; and all corporate actions taken by such cities, towns, and villages after the passage of such ordinances or resolution accepting the benefits of said Title, and which could have been lawfully performed by a city or town having the powers under said Title, are hereby authorized, ratified, confirmed, and validated; and all proceedings heretofore had by the governing bodies of all such cities, towns, and villages in the issuance and sale of bonds, to aid in financing any project and/or projects for which a loan or grant has been made or applied for to the United States through the Federal Emergency Administrator of Public Works or any agency, department, or division of the Government of the United States of America, are herein in all things fully validated, confirmed, approved, and legalized; and all such bonds issued thereunder are hereby declared to be the valid and binding obligations of such cities and towns; and all such bonds which have been heretofore authorized but not yet issued or sold shall, when delivered and paid for, constitute valid and binding obligations of such cities and towns. All tax levies made by such governing bodies for the purpose of paying the principal of and interest on such bonds are hereby in all things validated, confirmed, approved and legalized. Added Acts 1939, 46th Leg., Spec.L., p. 1001, § 1.

Effective May 11, 1939.

Sec. 2 of the Act of 1939 provided that: "The provisions of this Act shall not apply to any such proceedings or obligations thereunder where the validity thereof has

been contested or attacked in any suit or pending litigation."

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

Art. 961b—1. Town or village under commission form of government having \$500,000 taxable property may adopt this title

Section 1. That any town or village heretofore incorporated under the provisions of Chapter 12 of Title 28 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, and having an assessed valuation for taxable purposes of Five Hundred Thousand (\$500,000.00) Dollars or more, according to its latest approved tax rolls, notwithstanding any limitation contained in Article 1163 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, is hereby authorized to adopt the powers of cities and towns in the manner specified in Article 961 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, notwithstanding any limitation contained in said Article as to minimum population or as to the inclusion of manufacturing establishments; and, after having adopted such powers, any such municipality shall be known as a city or town, and shall be vested with all of the rights, powers, privileges, immunities and franchises conferred or imposed on cities or towns by the laws contained in Title 28 of the Revised Civil Statutes of Texas, 1925, and amendments thereto.

Sec. 2. That this Act shall be cumulative of all other laws, but, in the event any of its provisions shall conflict with the provisions of any other law, the provisions hereof shall prevail to the extent of such conflict. Acts 1939, 46th Leg., p. 91.

Effective April 13, 1939.

Section 3 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act authorizing towns and villages, heretofore incorporated under Chapter 12 of Title 28, Revised Civil Statutes of Texas, 1925, and amendments thereto, having an assessed valuation for taxable purposes of Five Hundred Thousand (\$500,000.00) Dollars or more, according to its latest approved tax rolls, notwithstanding any limitation contained in Article 1163 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, to adopt the powers of cities and towns in the

manner prescribed by Article 961 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, notwithstanding any limitation contained in said Article as to minimum population or as to the inclusion of manufacturing establishments, providing that such municipalities shall thereafter have all of the rights, powers, privileges, immunities and franchises of cities and towns conferred by the laws contained in Title 28 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, making this Act cumulative of all other laws, providing that in the event of a conflict, the provisions of this Act shall prevail, and declaring an emergency. Acts 1939, 46th Leg., p. 91.

Art. 974d. Validation of incorporation of cities of 600 to 2000 inhabitants incorporated since January 1, 1935

That all cities and towns in this State having more than six hundred (600) and less than two thousand (2,000) inhabitants which have heretofore incorporated under the General Laws of Texas, Title 28, Revised Civil Statutes of Texas, 1925,<sup>1</sup> and which are or may be invalid by reason of having included within their corporate limits lands not used for strictly town purposes, but which cities and towns do not include more than two (2) square miles of territory, are hereby declared to be duly and legally incorporated, and the boundaries of such cities as set forth in their incorporation proceedings are hereby expressly authorized and validated; that all actions, proceedings, and elections done or had in connection with the incorporation or attempted incorporation of such cities and towns are in all things validated; and all subsequent acts of such cities and towns, done or performed as a city or town, are hereby validated and declared as binding as if said cities had been duly and legally incorporated. The provisions of this Act shall apply only to cities

and towns incorporated since January 1, 1935. [Acts 1937, 45th Leg., p. 569, ch. 280, § 1.]

Effective May 5, 1937.

1 Articles 961-1269j.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating the incorporation of certain cities and towns of more than six hundred (600) and less than two thousand

(2,000) inhabitants which have heretofore incorporated under the General Laws of Texas, Title 28, Revised Civil Statutes of Texas, 1925; provided that this Act shall apply only to cities and towns incorporated since January 1, 1935; and declaring an emergency. [Acts 1937, 45th Leg., p. 569, ch. 280.]

**Art. 974e. Procedure for annexation of unoccupied lands to cities or towns of 4,190 to 4,250 population**

That the owner or owners of any land and/or territory, which is vacant and without residents, contiguous and adjacent to any city in this State having a population of not less than four thousand one hundred and ninety (4,190) inhabitants, and not more than four thousand two hundred and fifty (4,250) inhabitants, according to the last preceding Federal Census, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five and not more than thirty days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinances of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments for deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having an interest in such land, shall be filed in the office of the county clerk of the county in which such city is situated. Acts 1937, 45th Leg., p. 1052, ch. 447, § 1.

Effective June 8, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act prescribing the method for the annexation of unoccupied territory con-

tiguous and adjacent to the city limits of certain incorporated cities or towns, on petition of the owners of all such territory; providing for the recording of such petitions, and declaring an emergency. [Acts 1937, 45th Leg., p. 1052, ch. 447.]

**Art. 974e—1. Procedure for annexation of unoccupied lands to cities or towns of 1251 to 1259 population**

Section 1. That the owner or owners of any land and/or territory, or the Board of Trustees of any school or schools which occupy such territory, which is vacant and without residents, contiguous and adjacent to any city in this State having a population of not less than twelve hun-

dred fifty-one (1251) and not more than twelve hundred fifty-nine (1259) inhabitants, according to the last preceding Federal Census; may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinances of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments of deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having an interest in such land, shall be filed in the office of the county clerk of the county in which such city is situated. Acts 1939, 46th Leg., Spec.L., p. 519.

Effective April 18, 1939.

Section 3 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act prescribing the method for the

annexation of unoccupied territory contiguous and adjacent to the city limits of certain incorporated cities or towns, on petition of the owners of all such territory; providing for the recording of such petitions, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 519.

#### Art. 974e—2. Procedure for annexation of unoccupied lands to cities of 20,520 to 20,540 population

Section 1. That the owner or owners of any land and/or territory, or the Board of Directors of any University or College, which occupies such territory, which is vacant and without residents contiguous and adjacent to any city in this State having a population of not less than twenty thousand five hundred and twenty (20,520) nor more than twenty thousand five hundred and forty (20,540) inhabitants, according to the last preceding Federal Census, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens

of such city; and shall be bound by the acts and ordinance of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments of deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having an interest in such land, shall be filed in the office of the county clerk of the county in which such city is situated. Acts 1939, 46th Leg., Spec.L., p. 520.

Effective April 27, 1939.

Section 3 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act prescribing the method for the

annexation of unoccupied territory contiguous and adjacent to the city limits of certain incorporated cities or towns, on petition of the owners of all such territory; providing for the recording of such petitions, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 520.

## CHAPTER TWO—OFFICERS AND THEIR ELECTION

### Art. 978. [785] [388] [345] Election

Acts 1937, 45th Leg., p. 256, ch. 133 validating elections in cities of 4,190 to 4,250 reads as follows:

"Section 1. That all elections, election orders, election proceedings, and all actions and proceedings and contracts taken or made in pursuance thereof, of any city having a population of more than four thousand, one hundred and ninety (4,190) inhabitants, and not more than four thousand, two hundred and fifty (4,250) inhabitants, as shown by the last preceding

Federal Census, which have been heretofore held, passed, or entered into, providing for the extension of corporate limits of such city, are hereby ratified and confirmed; such extension and actions, proceedings, and contracts taken or made in pursuance thereof, shall be deemed and held valid in all respects, to the same extent as if done under legislative authority previously given."

Effective April 9, 1937.

## CHAPTER FOUR—THE CITY COUNCIL

Art.  
1015e. Licensing dealers in motor vehicles or accessories [New].  
1015f. Motor vehicles, regulation of operation by cities of 230,000 to 232,000 inhabitants [New].

Art.  
1024b. Composition with creditors under Federal Bankruptcy Laws [New].

### Art. 1013. 819-821 Publication of ordinances

Publication of ordinances enacted by Home Rule Cities, see article 1176b-1.

### [Art. 1015d. Acquisition of gas systems and distribution of gas by cities]

Section 1. Any city (or), town, or village, whether created by general or special law, including cities operating under the Home Rule Amendment to the State Constitution, which is served neither by an artificial gas distribution system nor by a natural gas distribution system, privately owned or owned by said city, may acquire either by purchase, con-

struction, or otherwise a system designed to prepare, to make available, and to distribute to the inhabitants of the city who may subscribe for such service, artificial gas useful for fuel and lighting purposes, manufactured and compounded substantially in the following manner: liquefied butane, a by-product obtained in the manufacture of gasoline from natural gas, is mixed with a proper proportion of propane, resulting in a liquefied gas capable of being transported in tank cars or otherwise to storage tanks, whence it may be drawn and mixed by automatically controlled mixing machines and released into gas storage tanks, said mixture then being suitable for distribution in mains and laterals to consumers, or manufactured and compounded in any other manner which will result in making available for distribution in mains and laterals, an economically useful gas for domestic and commercial fuel and lighting uses. As amended Acts 1937, 45th Leg., p. 567, ch. 278, § 1.

Amendment of 1937, effective May 5, 1937, declared an emergency and provided that the act should take effect from and after its passage.

Section 2 of the amendatory act of 1937

#### Art. 1015e. Licensing dealers in motor vehicles or accessories

Section 1. The power and authority is hereby conferred upon all cities and towns of Texas, whether incorporated under general or special law, to provide suitable ordinance, for the regulation, supervision, control and licensing of all persons, firms or corporations engaged, primarily or incidentally, in the sale, barter or exchange of motor vehicles, or parts thereof or accessories thereto within the corporate limits of such city, and to fix penalties for the violation thereof; provided that all sums of money collected from such dealers shall be used by the city for the enforcement hereof, and for the enforcement of all provisions of the law regulating the sale, theft or exchange of motor vehicles or parts, or accessories thereto and for no other purpose.

Sec. 2. In case any section, subdivision, paragraph, or sentence of this Act is declared unconstitutional the validity of the remainder of this Act shall not be affected thereby. Acts 1937, 45th Leg., p. 404, ch. 203.

Effective 90 days after May 22, 1937, date of adjournment.

Section 3 of this act declared an emergency making the act effective on and after its passage.

##### Title of Act:

An Act conferring upon all incorporated cities and towns of Texas power and authority to regulate, supervise, control and license all persons, firms or corporations engaged in the sale, barter or exchange of motor vehicles or parts thereof

or accessories thereto within the corporate limits of such cities or towns; authorizing such cities and towns to prescribe penalties for the violation of ordinances passed in pursuance hereto; providing that all sums of money collected by such cities and towns under authority of this Act shall be used for the purpose of defraying the expenses of enforcement; declaring the terms of this Act to be severable, and declaring an emergency. [Acts 1937, 45th Leg., p. 404, ch. 203.]

#### Art. 1015f. Motor vehicles, regulation of operation by cities of 230,000 to 232,000 inhabitants

Section 1. All Cities and Towns in the State of Texas, whether incorporated under General or Special Law, including Home Rule Cities, having a population in excess of 230,000 and not exceeding 232,000 inhabitants, according to the last preceding or any future Federal Census, shall have and they are hereby given the power and authority to pass an ordinance or ordinances:

(a) Requiring all residents of said City, including corporations having their principal office or place of business in said City, owning a motor vehicle used for the transportation of persons or property, to have

each and every such motor vehicle tested and inspected and to comply with such requirements, as may be imposed by said ordinance, not more than four times in each calendar year;

(b) Requiring that other and additional tests and inspections may be required of all such motor vehicles involved in any wreck, collision, or accident before the same may be operated on the streets, alleys, or other public thoroughfares of said City after said wreck, collision, or accident;

(c) Requiring as a condition precedent to the right to use the streets, alleys, or other public thoroughfares of said City that such motor vehicles operated thereupon shall have been tested and inspected, shall have been approved by said testing and inspecting authorities, including the State Highway Patrol, and shall have complied with all provisions of said ordinance;

(d) Authorizing City Patrolmen and State Highway Patrolmen in uniform to stop without warrant such drivers of motor vehicles as may fail to comply with said ordinance and issue to the violators such traffic violation tickets as may be provided under said ordinance;

(e) Providing a penalty subject to the limitations of Article 1011 of the Revised Civil Statutes of the State of Texas for the violation of any of the terms of said ordinance.

#### **Testing stations**

Sec. 2. Said Cities shall be and they are hereby authorized to acquire, establish, erect, equip, improve, enlarge, repair, operate, and maintain motor vehicle testing stations and to pay for the same out of the fees charged for testing and inspecting said motor vehicles.

#### **Fees for testing and inspecting vehicles**

Sec. 3. Said Cities shall have and they are hereby given power and authority to prescribe and collect a fee, not to exceed One (\$1.00) Dollar per year per vehicle, for the testing and inspecting of each such motor vehicle. All fees so collected to be placed in a separate fund, out of which costs and expenses in connection with, or growing out of the acquisition, establishment, erection, equipping, improvement, enlargement, repairing, operating, and maintaining said testing stations, and automotive and Safety Education programs, may be paid.

#### **Financing purchase of testing stations**

Sec. 4. Said Cities shall have and they are hereby given power and authority to pay for such testing stations and the equipping, maintaining, and operating thereof out of past or future earnings of said stations, and may mortgage and encumber said stations and everything pertaining thereto acquired, to secure the payment of funds to construct the same or any part thereof, or to erect, equip, improve, enlarge, repair, operate, or maintain said stations. No such mortgage or encumbrance shall ever be a debt of such City, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of such City to issue bonds for any purpose authorized by law. Said Cities may borrow money and issue warrants to finance in whole or in part the cost of the acquisition, erection, equipping, improvement, enlargement, or repair of said stations and to pledge for the punctual payment of said warrants and interest thereon all or any part of the fees or other receipts derived from the operation of such stations.

#### **Partial invalidity**

Sec. 5. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circum-

stance, is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity or unconstitutionality.

**Not applicable to vehicles operating under certificate from Railroad Commission**

Sec. 5a. Nothing herein or in any ordinance passed pursuant hereto shall apply to motor vehicles, trailers, or semitrailers operated under a certificate or permit from the Railroad Commission of Texas. [Acts 1937, 45th Leg., p. 750, ch. 368.]

Effective 90 days after May 22, 1937, date of adjournment.

Section 6 of this act repeals all conflicting laws and parts of laws. Section 7 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act empowering and authorizing Cities and Towns in the State of Texas having a population in excess of 230,000 and not exceeding 232,000, according to the last preceding or any future Federal Census, to enact ordinances governing operation of all motor vehicles upon the public thoroughfares of such Cities; providing that said ordinances may require testing and inspecting such motor vehicles at stated times and approval by the testing and inspecting authorities, including

the State Highway Patrol; providing certain exceptions thereto; permitting the fixing of penalties for violating said ordinances; authorizing City Patrolmen and State Highway Patrolmen in uniform to issue traffic tickets for violations of said ordinances; authorizing such Cities to acquire, establish, erect, equip, improve, enlarge, repair, operate, and maintain motor vehicle testing stations to prescribe and collect a fee for such tests and for the disposition of such fees; authorizing said Cities to mortgage or encumber said stations to borrow money and issue warrants to finance said stations and to pledge said fees and receipts for payment of said indebtedness; providing a saving clause; repealing all conflicting laws, and declaring an emergency. [Acts 1937, 45th Leg., p. 750, ch. 368.]

**Art. 1024b. Composition with creditors under Federal Bankruptcy Laws**

That all municipalities, political subdivisions, and taxing districts in this State as defined in Section 81, Chapter 657, Acts of the Seventy-fifth Congress of the United States, 50 Statutes at Large, Page 654, 11 U.S.C.A. Sec. 401, which have power to incur indebtedness, either through action of their own governing bodies or through action of the governing bodies of counties or cities in which such political subdivisions or taxing districts are included, are hereby authorized to proceed under all laws that have been heretofore enacted by the Congress of the United States under the Federal Bankruptcy powers to effect a plan for the composition of their indebtedness, and the officials and governing bodies of such municipalities, political subdivisions, and taxing districts are authorized to adopt all proceedings and to do any and all acts necessary to fully avail such municipalities, political subdivisions, and taxing districts of the provisions of such Acts of Congress, but this Act shall not apply to any bond or bonds while held by the permanent school fund of Texas. Acts 1939, 46th Leg., p. 70, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

**Title of Act:**

An Act authorizing municipalities, political subdivisions, and taxing districts to

effect a plan for the composition of their indebtedness under the provisions of the Federal Bankruptcy Laws heretofore enacted by the Congress of the United States; and declaring an emergency. Acts 1939, 46th Leg., p. 70.



## CHAPTER FIVE—TAXATION

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| <p>Art.<br/>1027d. Validation of ad valorem tax levies in cities and towns of 3305 to 3445 [New].</p> <p>1027e. Validation of ad valorem tax levies in cities and towns of 3000 to 4000 [New].</p> <p>1027f. Validation of ad-valorem tax levies in cities and towns of 1245 to 1255 population [New].</p> <p>1027g. Validation of ad valorem tax levies in cities and towns of 3,450 to 3,455 population [New].</p> <p>1042a. Ordinances authorizing assessors, or assessors and collectors to prescribe assessment forms, lists,</p> | <p>Art.<br/>and rolls; cities and towns of 230,000 to 250,000 [New].</p> <p>1042b. Assessment and collection of taxes in cities, etc. [New].</p> <p>1044a. City councils and trustees of independent school districts authorized to fix compensation of tax assessors and collectors in counties of 43,030 to 43,040 population [New].</p> <p>1066a. Taxes levied by counties and other political subdivisions not included in determining power of home rule city or town to levy taxes [New].</p> |
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**Art. 1027d. Validation of ad valorem tax levies in cities and towns of 3305 to 3445**

That all levies and assessments of ad valorem taxes heretofore made by the governing body of any city or town incorporated in this State, which are unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by ordinance as required by law; and all assessments of taxes or assessments of property within the limits of any such city or town in this State subject to taxation under the laws of this State, for taxation under such resolution, motion or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for such city or town which are irregular or insufficient because the reports of such equalization were adopted and accepted orally or by other informal action, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record and signed by the proper officials of such governing body, and the same as though such assessments of property within such city or town for taxation purposes had been made in due and complete form, time and manner, and the same as though said equalizations and the reports of the Boards of Equalization acting for such city or town had been made in due and regular form, time and manner, and adopted and accepted in due and regular form. Provided, however, that the terms of this Act shall apply only to incorporated cities and towns having a population of not less than three thousand three hundred five (3,305) inhabitants, and not more than three thousand four hundred forty-five (3,445) inhabitants, according to the last preceding Federal Census; and provided, further, that this Act shall not affect any suit or suits pending in any Court in this State on the effective date of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 2090, ch. 560, § 1.]

Effective Oct. 31, 1936.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate, ratify, approve, confirm and declare enforceable all levies and

assessments of ad valorem taxes heretofore made by incorporated cities and towns in this State which are unenforceable because same were made and adopted by resolution, motion or other informal action, and because of the failure of the governing body of such city or town to

appoint the proper and statutory board of equalization; and which are insufficient and unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of such valuations of such property for taxation purposes made by the boards of equalization acting for such city or town which are irregular or insufficient because such reports were adopted orally or by other informal action; provided, this

Act shall not affect any suit or suits pending at the time this Act becomes effective; and provided further, that this Act shall be applicable only to cities and towns having a population of not less than three thousand three hundred five (3,305) inhabitants, and not more than three thousand four hundred forty-five (3,445) inhabitants according to the last preceding Federal Census; and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 2090, ch. 500:]

**Art. 1027e. Validation of ad valorem tax levies in cities and towns of 3000 to 4000**

Section 1. All levies for ad valorem taxes heretofore made by the governing body of any incorporated City or Town in this State which are void and unenforceable because such levies were made and adopted by resolution, motion, or other informal action instead of having been made by ordinance or which are void and unenforceable because of the failure of the governing bodies of such incorporated City or Town to appoint the proper and statutory Board of Equalization, as required by the laws of this State, or where the City Council, City Commission, or other governing body of such incorporated City or Town has acted as a Board of Equalization in the fixing of the valuation of taxable property for ad valorem taxes within any such incorporated City or Town and which levies are otherwise legally enforceable are hereby validated and that same are hereby declared enforceable the same as though they had been made and adopted originally by ordinance duly passed and as heard before a properly and legally appointed Board of Equalization; provided that the provisions of this Act shall be applied only to those incorporated Cities and Towns in this State having a population of not less than three thousand (3,000); and not more than four thousand (4,000) according to the last preceding United States Census.

Sec. 2. The provisions of this Act shall not be construed as validating any such levies for ad valorem taxes, and/or proceedings incident thereto, where the validity of such levy, and/or proceedings incident thereto, have been attacked or contested in any pending suit or litigation. Acts 1937, 45th Leg., p. 183, ch. 98.

Effective April 6, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate all ad valorem tax levies heretofore made by incorporated Cities and Towns in the State of Texas which levies are unenforceable because of failure of the governing body of each respective incorporated City and Town to make such levy by Ordinance, and which are unenforceable because of the failure of such governing bodies to appoint the statutory Board of Equalization, or where the City Council, City Commission, or other governing body of such incor-

porated City or Town has acted as a Board of Equalization in the fixing of the valuation of taxable property for ad valorem taxes within any such incorporated City or Town; provided that the provisions of this Act shall be applied only to those incorporated Cities and Towns in this State having a population of not less than three thousand (3,000) and not more than four thousand (4,000) according to the last preceding United States Census; providing this Act shall not validate any levies for ad valorem taxes where the validity of such levy has been contested in any pending suit, and declaring an emergency. [Acts 1937, 45th Leg., p. 183, ch. 98.]

**Art. 1027f. Validation of ad-valorem tax levies in cities and towns of 1245 to 1255 population**

That all levies and assessments of ad valorem taxes heretofore made by the governing body of any incorporated city or town in this

State, which are voidable or unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by order, as required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of any incorporated city or town in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient, and voidable, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such incorporated city or town, which are irregular or insufficient because the reports of such equalizations were adopted and accepted orally, or by other informal action; and the acts of making such equalizations were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record and signed by the proper officials of such governing body, and the same as though such assessments of property within such incorporated cities or towns for taxation purposes had been made in due and complete form, and the same as though said equalizations and the reports of each of the Boards of Equalization acting for said incorporated cities or towns had been made in due and regular form, and adopted and accepted in due and regular form; and all levies, assessments and equalizations of ad valorem taxes heretofore made in such cities or towns which are insufficient or unenforceable because of the failure of the governing body or any officer of such city or town to prepare, have public hearings on and file a budget are hereby validated and declared enforceable the same as though the budgets had been made, heard and filed; provided that the provisions of this Act shall be applied only to those incorporated cities and towns having a population of not less than twelve hundred forty-five (1245), and not more than twelve hundred fifty-five (1255), according to the last preceding United States census. Provided, however, that this Act shall not affect any suit now pending in any Court of this State. [Acts 1937, 45th Leg., 2nd C.S., p. 1883, ch. 14, § 1.]

Effective Nov. 3, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate, ratify, approve, confirm, and declare enforceable, all levies and assessments of ad valorem taxes heretofore made by incorporated cities and towns in the State of Texas because the same were made and adopted by resolution, motion, or other informal action, and because of the failure of the governing body of such city and town to appoint the proper and statutory Board of Equalization; and which are insufficient and voidable, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Boards

of Equalization acting for any such city or town, which are irregular or insufficient because the reports of such equalizations were adopted and accepted orally, or by other informal action; and the acts of making such equalizations were made orally or by other informal action; or in incomplete form; and because of the failure of the governing body or any officer of such city or town to prepare, have public hearings on, and file a budget; and providing further that this Act shall apply only to those incorporated cities and towns in this State having a population of not less than twelve hundred forty-five (1,245) and not more than twelve hundred fifty-five (1,255), according to the last preceding Federal Census; providing this Act shall not affect suits pending at the time same becomes effective; and declaring an emergency. Acts 1937, 45th Leg., 2nd C.S., p. 1883, ch. 14.

Art. 1027g. Validation of ad valorem tax levies in cities and towns of 3,450 to 3,455 population

Section 1. That all levies and assessments of ad valorem taxes heretofore made by the governing body of any incorporated city or town in this State having a population of not less than three thousand four hundred fifty (3,450) inhabitants nor more than three thousand four hundred fifty-five (3,455) inhabitants according to the last Federal Census, which are void or unenforceable because such levies were made and adopted by resolution, motion, or other informal action, instead of having been made by ordinance, as required by the Statutes of this State, and all assessments of property within the limits of any incorporated city or town in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, made by the Tax Assessor and Collector of any such incorporated city or town, which are void or unenforceable because of irregularities in the manner of assessing such property or preparing the assessment rolls and reports, and all ad valorem taxes levied and assessed against property within the limits of any incorporated city or town in this State, subject to taxation under the laws of this State, which are void or unenforceable because of irregularities in the manner any such Tax Assessor and Collector prepared the current tax rolls, or because of the failure of any such Tax Assessor and Collector to prepare the current tax rolls as required by the Statutes of this State, are each and all hereby ratified, validated, approved, confirmed, and declared enforceable, the same as though such levies and assessments of ad valorem taxes had been made and adopted originally by proper ordinance, duly passed, entered of record and signed by the proper officers of such governing body, and the same as though such assessments of property within such incorporated cities or towns for taxation purposes had been made in due and complete form and manner, and the same as though such assessment rolls and current tax rolls had been made and prepared in due and complete form and manner as required by the Statutes of this State.

Sec. 2. The provisions of this Act shall not be construed as validating any such levies and assessments for ad valorem taxes, and/or proceedings incident thereto, where the validity of such levy and assessment, and/or proceedings incident thereto, have been attacked or contested in any pending suit or litigation. Acts 1939, 46th Leg., Spec.L., p: 995.

Effective June 30, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to validate all ad valorem tax levies and assessments heretofore made by incorporated cities and towns in the State of Texas having a population of not less than three thousand four hundred fifty (3,450) inhabitants and not more than three thousand four hundred fifty-five (3,455) according to the last Federal Census, which levies and assessments are void or unenforceable because of the failure of the governing body of each respective incorporated city and town to make such levy by ordinance and which

levies and assessments of property are void or unenforceable because of the failure of the Tax Assessor and Collector of each respective incorporated city and town to make and prepare the proper assessment rolls and reports and which levies and assessments are void or unenforceable because of the failure of such Tax Assessor and Collector to make and prepare current tax rolls as required by the Statutes of this State; providing this Act shall not validate any levies and assessments for ad valorem taxes where the validity of such levy and assessment has been contested in any pending suit; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 995.

**Art. 1042a.** Ordinances authorizing assessors, or assessors and collectors to prescribe assessment forms, lists, and rolls; cities and towns of 230,000 to 250,000

That all cities and towns in the State of Texas whether incorporated under General or Special Law, including Home Rule Cities, having a population in excess of two hundred and thirty thousand (230,000) and not more than two hundred and fifty thousand (250,000), according to the last preceding or any future Federal Census, shall have and they are hereby given the power and authority, any law to the contrary notwithstanding, to pass an ordinance or ordinances:

(a) Empowering the assessor of taxes, or the assessor and collector of taxes, as the case may be, to prescribe assessment forms, lists, or statements for rendering or listing property for taxation by the taxpayer in such city or town, which said assessment forms, lists, or statements shall provide and contain sufficient space and appropriate headings as will make possible their use as a combination assessment-roll-tax-roll, which are now required by law to be made separately, and to provide for the binding of such assessment-roll-tax-roll lists, forms, or statements, into one series of rolls, alphabetically arranged, without reference as to whether such listing or rendering is made by the taxpayer or by the assessor-collector. [Acts 1937, 45th Leg., 2nd C.S., p. 1896, ch. 22, § 1.]

Effective Oct. 23, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act empowering and authorizing cities and towns in the State of Texas having a population in excess of two hundred and thirty thousand (230,000) and not more than two hundred and fifty thousand (250,000), according to the last preceding or any future Federal Census, to enact ordinances authorizing city and town assessors, or

assessors and collectors, to prescribe such assessment forms, lists, or statements for rendering property as will also serve as a tax roll without the necessity of recompling such tax roll from the original assessment roll; authorizing the binding of such assessment forms, lists, or statements and combination tax roll, regardless of whether rendered or unrendered, into one roll in alphabetical order; providing a saving clause; and declaring an emergency. Acts 1937, 45th Leg., 2nd C.S., p. 1896, ch. 22.

**Art. 1042b.** Assessment and collection of taxes in cities, etc.

Section 1. Any incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district in the State of Texas is hereby authorized by ordinance or by proper resolution to authorize the County Assessor of the county in which said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district is located to act as Tax Assessor for said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district or authorize the Tax Collector of the County in which said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district is situated to act as Tax Collector for said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district.

Sec. 2. When an ordinance or proper resolution is passed, making available the services of the County Tax Assessor to such incorporated

city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district it shall be the duty of the said Tax Assessor of the county in which such incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district is situated to assess the taxes for said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district according to the ordinances and resolutions of said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district and perform the duties of Tax Assessor for said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district according to the ordinances and resolutions of said incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district, and according to law.

Sec. 3. When an ordinance or proper resolution is passed availing such incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts of the services of the County Tax Collector, it shall be the duty of said Tax Collector of the county in which said incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts are situated to collect the taxes and assessments for said incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts and turn over as soon as collected to the respective proper depository of said incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts or other authority authorized to receive such taxes or assessments, all taxes or moneys collected for said incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts according to the ordinances or resolutions of said incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts, and according to law, less his fees hereinafter provided for, and shall perform the duties of Tax Collector of said incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts.

Sec. 4. The property in said incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts taking advantage of this Act shall be assessed at the same value as it is assessed for county and State purposes.

Sec. 5. When the County Assessor and County Collector are required to assess and collect the taxes in any incorporated city, town, or village, independent school district, common school district, drainage district, water control and improvement district, water improvement district, or navigation district they shall respectively receive for such services an amount to be agreed upon by the governing body of such incorporated

cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts and the Commissioners Court of the county in which such incorporated cities, towns, or villages, independent school districts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts are situated not to exceed one per cent of the taxes so collected. Acts 1939, 46th Leg., p. 652.

Effective May 18, 1939.

Section 6 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of act:**

An Act authorizing incorporated cities, towns, or villages, independent school dis-

tricts, common school districts, drainage districts, water control and improvement districts, water improvement districts, or navigation districts in this State to avail themselves of the services of County Tax Assessors and Collectors; fixing the compensation of said county officers for said services; and declaring an emergency. Acts 1939, 46th Leg., p. 652.

**Art. 1044a. City councils and trustees of independent school districts authorized to fix compensation of tax assessors and collectors in counties of 43,030 to 43,040 population**

Section 1. The City Councils of all cities and towns within this State may at their option increase the compensation of city tax assessors and collectors in any sum not to exceed Three Hundred Dollars (\$300) per annum in addition to the amount that is now allowed as compensation to tax assessors and collectors of said cities and towns.

Sec. 2. The trustees of any independent school district within said counties may at their option increase the compensation of tax assessors and collectors of taxes of said independent school districts in addition to the amount now paid not to exceed the sum of Three Hundred Dollars (\$300) per annum in all counties with a population of not less than forty-three thousand and thirty (43,030) and not more than forty-three thousand and forty (43,040), according to the last Federal Census. [Acts 1937, 45th Leg., 2nd C.S., p. 1994, ch. 66.]

Effective Nov. 3, 1937.

Section 3 repeals all conflicting laws and parts of laws; section 4 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act permitting the City Councils of all cities and towns in this State and the trustees of independent school districts to fix the compensation of the tax assessors

and collectors in said cities, towns, and independent school districts in counties with a population of not less than forty-three thousand and thirty (43,030) and not more than forty-three thousand and forty (43,040), according to the last Federal Census; repealing all laws in conflict; and declaring an emergency. Acts 1937, 45th Leg., 2nd C.S., p. 1994, ch. 66.

**Art. 1048. [945-955] Equalization board**

The councils of cities and towns incorporated under the General Laws shall within their discretion act as a Board of Equalization. Said councils of such cities and towns shall annually at their first meeting or as soon thereafter as practical exercise such discretion, and if they so determine they shall have the authority to appoint three (3) commissioners, each a qualified voter, a resident, and property owner of the city or town for which he is appointed who shall be styled the Board of Equalization. At the same meeting said council shall by ordinance fix the time for the meeting of such Board. Before said Board enters upon its duties, it shall be sworn to faithfully and impartially discharge all du-

ties incumbent upon it by law as such Board. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1946, ch. 46, § 1.]

Effective Oct. 29, 1937. the act should take effect from and after its passage.  
Section 2 of the amendatory act of 1937 declared an emergency and provided that

**Art. 1066a.** Taxes levied by counties and other political subdivisions not included in determining power of home rule city or town to levy taxes

Section 1. That the taxes levied by any county, any political subdivision of a county, any number of adjoining counties, any political subdivision of the State, or any defined district under or by virtue of Article 3, Section 52 of the Constitution of the State of Texas, shall not be reckoned in determining the power of any city or town to levy city taxes, irrespective of whether such city or town is located wholly or partly within such county, number of adjoining counties, political subdivision, or defined district, or whether such political subdivision or defined district be included wholly or partly within such city.

Sec. 2. In case of conflict between this Act and any city charter or any special law constituting the charter of a city, the provisions of this Act shall prevail.

Sec. 3. Provided, however, that this Act shall not apply except as to cities and towns acting under a home rule charter and which has, prior to the effective date of this Act, attempted to amend its charter and which at the time of said Charter amendment election did not own any of the following utilities from which it could derive revenue: water system, sanitary sewer system, electric light system or natural gas distribution system.

Sec. 4. Provided, however, that the provisions of this Act shall not in any manner validate any obligations issued by any such city or town, the validity of which obligations is in litigation at the time this Act becomes effective. Acts 1939, 46th Leg., p. 94.

Effective June 30, 1939.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.  
Title of Act:

An Act providing that taxes levied by other entities under and by virtue of Article 3, Section 52 of the Constitution shall never be reckoned in determining the power of any city or town to levy taxes; providing that in the event of conflict between this Act and any provisions of a city charter or of a special law constituting a charter of a city the pro-

visions of this Act shall prevail; providing that this Act shall not apply except as to cities and towns which on the effective date of this Act did not own any of the following utilities: Water system, sanitary sewer system, electric light system, or natural gas distribution system; providing that the provisions of this Act shall not in any manner validate any obligations issued by any such city or town, the validity of which obligations is in litigation at the time this Act becomes effective; and declaring an emergency. Acts 1939, 46th Leg., p. 94.

## CHAPTER NINE—STREET IMPROVEMENTS

**Art. 1105b.** Street improvements and assessments in cities having more than 1000 inhabitants

**Cities over 285,000; improvements on highway or road outside limits**

Any city mentioned in Section 1 and having a population in excess of two hundred and eighty-five thousand (285,000) inhabitants according to the last preceding or any future Federal Census may make the improvements named in Section 1 hereof on any highway or road without the limits of such city if such improvements do not extend more than



one hundred and fifty (150) feet from the limits of such city. Acts 1927, 40th Leg., 1st C.S. p. 489, ch. 106, § 1a, added by Acts 1939, 46th Leg., p. 104, § 1.

Effective 90 days after June 21, 1939,  
 date of adjournment of Legislature.

Section 2 of amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Assessments on abutting property; certificates**

Sec. 6. Subject to the terms hereof, the governing body of any city shall have power by ordinance to assess all the cost of constructing, reconstructing, repairing, and realigning, curbs, gutters, and sidewalks, and not exceeding nine-tenths of the estimated cost of such improvements, exclusive of curbs, gutters, and sidewalks, against property abutting upon the highway or portion thereof ordered to be improved, and against the owners of such property, and to provide the time, terms, and conditions of payment and defaults of such assessments, and to prescribe the rate of interest thereon not to exceed eight (8) per cent per annum. Any assessment against abutting property shall be a first and prior lien thereon from the date improvements are ordered, and shall be a personal liability and charge against the true owners of such property at said date, whether named or not. The governing body shall have power to cause to be issued in the name of the city assignable certificates in evidence of assessments levied declaring the lien upon the property and the liability of the true owner or owners thereof whether correctly named or not and to fix the terms and conditions of such certificates.

If any such certificate shall recite substantially that the proceedings with reference to making the improvements therein referred to have been regularly had in compliance with the law and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and the personal liability of the owner or owners thereof have been performed, same shall be prima facie evidence of all the matters recited in said certificate, and no further proof thereof shall be required. In any suit upon any assessment or reassessment in evidence of which a certificate may be issued under the terms of this Act it shall be sufficient to allege the substance of the recitals in such certificate and that such recitals are in fact true, and further allegations with reference to the proceedings relating to such assessment or reassessment shall not be necessary.

Such assessments shall be collectable with interest, expense of collections, and reasonable attorney's fee, if incurred, and shall be first and prior lien on the property assessed, superior to all other liens and claims except State, county, school district, and city ad valorem taxes, and shall be a personal liability and charge against said owners of the property assessed. As amended, Acts 1937, 45th Leg., p. 904, ch. 439, § 1.

Effective June 9, 1937.  
 Section 2 of the amendatory act of 1937  
 declared an emergency and provided that

the act should take effect from and after  
 its passage.

## CHAPTER TEN—PUBLIC UTILITIES

## 1. CITY OWNED UTILITIES

- |   |  |
|---|--|
| Art.  | Art.   |
| 1109a-1. Validation of waterworks Revenue Refunding Bonds and Sewer System Revenue Refunding Bond [New].                                    | 1118l. Validating bonds and bond elections in cities and towns of 2601 to 2632 population [New].   |
| 1109d. Cities and towns authorized to contract with Water Improvement or Water Control and Improvement District for water supply [New].     | 1118m. Validating waterworks revenue bond elections and bonds in cities and towns of 989 to 1,039 in counties of 98,650 to 98,750 [New].         |
|   | 1118n. Bonds authorized by elections during 1938 in cities or towns not owning certain utilities [New].  |
|   | 1118n-1. Validating bonds for waterworks and sewer systems in cities operating under general law [New].  |
|   | 1118n-2. Validating revenue and ad valorem tax bonds and proceedings for waterworks and sewer systems in other than home-rule cities [New].      |
|   | 1118o-1. Validating acts and proceedings of cities in borrowing money from Federal Agencies to repair or extend dam for waterworks system [New]. |
| 2. ENCUMBERED CITY SYSTEM   |  |
| 1114d. Validation of bonds for swimming pools [New].  |  |
| 1118h. Validating bonds of cities of over 15,000 population [New].  |  |
| 1118i. Validating bonds of cities in counties of less than 80,000 and more than 70,000 [New].   |  |
| 1118j. Validating bonds and proceedings for loans or grants from Federal government in cities and towns of not over 3,000 population [New]. |  |
| 1118k. Validating bonds in cities of over 160,000 population [New].   |  |

## Art. 1108. [769 to 722\*] Public utilities

3. To extend the lines of such systems outside of the limits of such towns or cities and to sell water, sewer, gas, and electric light and power privileges or service to any person or corporation outside of the limits of such towns or cities, or permit them to connect therewith under contract with such town or city under such terms and conditions as may appear to be for the best interest of such town or city; provided that no electric lines shall, for the purposes stated in this section, be extended into the corporate limits of another incorporated town or city. [As amended Acts 1935, 44th Leg., p. 496, ch. 207, § 1; Acts 1937, 45th Leg., p. 806, ch. 397, § 1.]

\* Bracketed numbers should be 769-772.

Amendment of 1937, effective May 22, 1937.

Section 2 of the amendatory act of 1937

declared an emergency and provided that the act should take effect from and after its passage.

## Art. 1109a. Cities may mortgage, water system

**Operating expense first lien on income; rates; priorities; agreements as to payment**

Sec. 2. Whenever the income of any water system, and sewer systems and sewage disposal plants and systems, shall be encumbered under this Act, the expense of operating and maintenance, including all salaries, labor, materials, interest, repairs, and extensions, necessary to render efficient service, and every proper item of expense shall always be a first lien and charge against such income. The rates charged for services furnished by any of said systems shall be equal and uniform, and no free service shall be allowed, except in the discretion of the governing body, for city public schools, or buildings and institutions operated by such city, and there shall be charged and collected for such services a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges, and for an interest

and sinking fund sufficient to pay any bonds or notes issued to purchase, construct or improve any such system or any outstanding indebtedness against same.

Where bonds or notes are issued hereunder, and at the time of the authorization of such bonds or notes in the manner hereinafter prescribed, there are then outstanding other bonds, notes or obligations payable from the revenues of the water system, and sewer systems and sewage disposal plants and systems, the additional bonds or notes may nevertheless be issued, but shall be issued in such manner that they are in all respects subordinate to each issue of bonds, notes or obligations then outstanding. Each series of bonds or notes issued hereunder shall, as to lien on the revenues and physical properties of the water system, and sewer systems and sewage disposal plants and systems, be subordinate to each series of bonds, notes or obligations theretofore issued and remaining outstanding.

Subject to the terms and provisions hereof, the governing body of the city, in authorizing the issuance of bonds and notes hereunder, may enter into such agreements and covenants with respect to the manner of payment of such bonds and notes, and the application of the revenues of the water system, and sewer systems and sewage disposal plants and systems, as it may deem fit, provided, however, that no such bond, warrant or note shall ever be a general obligation of such city, and it shall be proper for the governing body to apply surplus revenues of the system not needed for the payment of principal of and interest on such bonds and notes, and not needed for the payment of operating and maintenance expenses, to the payment of any notes, warrants or other obligations the proceeds of which were used for the purpose of improving, repairing, adding to or extending the waterworks system, and sewer systems and sewage disposal plants and systems. As amended Acts 1939, 46th Leg., p. 99, § 2.

Filed without the Governor's signature, May 3, 1939.

Section 4 of the amendatory Act of 1939 repeals all conflicting laws and parts of

laws; section 5 declared an emergency and provided that the act should take effect from and after its passage.

**Property included in incumbrance; Attorney General to approve bonds; submission to voters**

Section 6. In the encumbrance of any properties under this Act such city may encumber any such water systems, and sewer systems and sewage disposal plants and systems, or any extensions, additions or enlargements thereof, singly or together, and may or may not include in such encumbrance the franchise provided for, and may omit or include in said encumbrances the whole or any part of the properties mentioned in Section 1 of this Act; but no such system shall ever be sold until such sale is authorized by a majority vote of the qualified property taxpayers of such city, or under the terms of any such mortgage or encumbrance, such vote where necessary to be ascertained at an election, of which notice shall have been given in like manner as in cases of the issuance of municipal bonds by such cities.

All bonds and notes issued hereunder shall be submitted to the Attorney General for examination, and upon his approval thereof, shall be registered by the State Comptroller in a book kept for that purpose, and the Comptroller shall endorse his certificate of registration on each such bond or note.

Bonds or notes may be issued under the provisions hereof and the revenues or physical properties of the water system, and sewer systems and sewage disposal plants and systems, encumbered as security for the

payment of such bonds and notes; such bonds or notes shall not be issued, however, until such issuance has been authorized by a majority vote of the qualified electors who own taxable property in the city where said election is being held, and who have duly rendered said property for taxation, such electors voting only in the precinct of their residence, and voting on such proposition under the Constitution and Laws of Texas. Such election shall be called and held in the manner provided for the calling and holding of other bond elections in such city. No other notices need be published or opportunities for the filing of petitions granted despite the provisions of any other Statute or of the charter of any such city. As amended Acts 1939, 46th Leg., p. 99, § 3.

Filed without the Governor's signature  
May 3, 1939.

**Title of Act:**

An Act to empower cities having more than one hundred and sixty thousand (160,000) inhabitants to purchase or otherwise acquire water systems, and sewer systems and sewage disposal plants and systems, and additions, extensions and enlargements thereto, and additional water powers, riparian rights, and repairs of such systems; to issue bonds or notes therefor, and to secure payment thereof to mortgage and encumber the same, and the incomes thereof, and everything pertaining thereto, or any part thereof, but the same shall further provide that such bonds, warrants or notes shall be paid solely from the revenue of such water system, and sewer systems and sewage disposal plants and systems, and shall never be in any other manner a charge or an obligation against such system; and providing that the question of the issuance of said bonds and notes shall first be submitted to a vote of the qualified taxpaying voters of

said city; and to grant to any purchaser under any sale or foreclosure a franchise to operate the same for not over twenty (20) years after such purchase; prescribing the powers and limiting the manner of their exercise; providing for a board of trustees to carry out any contract or encumbrance; providing for the election of a trustee and his successor, to make sale on default in payment; prescribing the method of foreclosure, and giving such cities the option to include or exclude any of such property from such encumbrance; prohibiting the sale of such systems unless authorized by a majority vote of the qualified property taxpayers, or under the terms of such encumbrance; providing for approval by the Attorney General and registration by the Comptroller; approving all proceedings heretofore had in the acquisition of any such systems and the encumbrance of same within the authority given by this Act; and declaring an emergency. Acts 1925, 39th Leg. ch. 33, p. 154, as amended Acts 1939, 46th Leg., p. 99, § 1.

**Art. 1109a—1. Validation of waterworks Revenue Refunding Bonds and Sewer System Revenue Refunding Bond**

That all Waterworks System Revenue Refunding Bonds and all Sewer System Revenue Refunding Bonds heretofore authorized, issued, exchanged, and delivered by cities in Texas operating under the provisions of Special Charters and which refunding bonds have been heretofore validated and confirmed by a final decree of a United States District Court in Texas, be, and the same are hereby in all things ratified, validated, and confirmed, and such refunding bonds so authorized, issued, exchanged, and delivered, shall hereafter be and constitute valid and binding obligations upon the revenues of such systems. [Acts 1937, 45th Leg., 2nd C.S., p. 1999, ch. 69, § 1.]

Effective Nov. 3, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act ratifying, validating, and confirming all Waterworks System Revenue Refunding Bonds heretofore authorized, issued, exchanged, and delivered by cities in Texas operating under the provisions of

Special Charters and which refunding bonds have been heretofore validated and confirmed by a final decree of a United States District Court in Texas; and providing that such refunding bonds so authorized, issued, exchanged, and delivered shall be and constitute valid and binding obligations upon the revenues of such systems; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1999, ch. 69.]

**Art. 1109d. Cities and towns authorized to contract with Water Improvement or Water Control and Improvement District for water supply**

Section 1. Any city or town in this state may contract with any water Improvement District or Water Control and Improvement District deriving its powers from Article XVI, Section 59, of the Constitution of Texas and any such District may contract with any such City or Town, for supplying water to said City. Such contract may run for such length of time as may be agreed upon between the Board of Directors of said District and the governing body of said City, not to exceed 30 years from the date of the contract, but said contract may also provide that it shall run until all warrants, notes or bonds, issued by such District for the acquisition of facilities necessary or convenient to enable the District to supply the City with water, have been paid in full.

**Payment for water out of water system revenues exclusively**

Sec. 2. Payment for water so supplied shall be made out of the water system revenues of such city or town, and the District shall never have the right to demand payment out of moneys raised or to be raised by taxation, and payments under the contracts herein authorized may be secured by a first lien on, and an irrevocable pledge of the revenues of said water system.

**Election approving contract; notice of election—ballots**

Sec. 3. Provided, however, that no such contract shall become binding until approved by a majority vote of the qualified electors in such City or Town at an election held for that purpose. Such election may be called by the governing body of the city on its own motion. Notice of such election shall be published in a newspaper of general circulation published in such City or Town once each week for two consecutive weeks the first of which publications shall be at least ten full days prior to the day set for the election, provided, that if no newspaper is published in such City or Town, notice of said election shall be given by posting notice thereof in each of the voting precincts of such City or Town and one at the City Hall. The notice of election shall state the date upon which the same shall be held, and shall state the proposition to be voted upon in such form as the governing body shall prescribe, but the notice need not set out the contract at length, or detail its provisions. For ten days next, preceding the election the proposed contract shall be on file in the office of the City Secretary and may be examined by any person. The governing body of the City shall prescribe the form of the ballots.

**General election law to govern elections; qualification of electors; returns**

Sec. 4. Except as otherwise provided in this Act, said election shall be conducted according to the general election law. Only qualified electors who own taxable property in the City and who have duly rendered the same for taxation, shall be qualified to vote. Returns of said election shall be made to the governing body of the city.

**Canvass of returns; effect of election**

Sec. 5. The governing body shall canvass the returns of said election as soon as practicable. If a majority of the votes cast at such election are in favor of approving the contract, the contract shall at once become binding and effective; if a majority of the votes are against the contract, the contract shall not become effective.

**Construction or acquiring of canals, reservoirs, basins, pipelines, filtration plants, and other equipment and supplies**

Sec. 6. Any such district may construct, or otherwise acquire and equip, such canals, reservoirs, basins, pipelines, conduits, filtration, and aeration plants, and all other equipment and supplies, and may acquire by purchase, eminent domain, or otherwise all such property as is necessary or convenient for the purpose of supplying water to a city as provided herein.

**Issuance of warrants, notes, or bonds; refunding or reissuing bonds**

Sec. 7. Any such District may issue warrants, notes or bonds to provide for the acquisition of the facilities necessary or convenient for supplying water to such city or town, and to secure such warrants, notes or bonds by a pledge of the revenues to be derived under any such contract then in existence or thereafter to be made for supplying water to such city or town. Where tax supported bonds hereafter are voted for such purpose, such bonds may be issued, secured by the pledge of such tax levy and by the pledge of such revenues or by either of such pledges. In instances where tax supported bonds have been voted heretofore in any such district but all or part thereof have not yet been sold, such unsold bonds may be issued and sold and the proceeds or any part thereof may be used for such purpose without the necessity of another election, and in such instances the District may secure such bonds by a levy of such taxes and by a pledge of the revenues to be derived under any such contract for supplying water either then in existence or thereafter to be made, or may secure said bonds by either of such methods. Bonds of such Districts heretofore voted may be refunded or re-issued without an election and such refunding or re-issued bonds may be secured as in this section provided.

**Partial invalidity**

Sec. 8. In the event any provision of this Act shall be in conflict with any other law the provisions of this Act shall be effective. [Acts 1937, 45th Leg., 2nd C.S., p. 1879, ch. 12.]

Effective Oct. 22, 1937.

Section 9 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing Cities and Towns to make contracts with Water Improvement and Water Control and Improvement Districts deriving their powers under Article XVI, Section 59, of the Constitution for water supply, fixing the maximum term of such contracts, limiting the liabilities of Cities and Towns under such contracts, making an election in such Cities and Towns a prerequisite to the making of such contracts, prescribing the method of calling and holding such elections and qualifications of voters; authorizing such districts to make such improvements needed for carrying out such contracts; -au-

thorizing such Districts to secure their notes, warrants and bonds by pledging the revenues under such contracts, and to secure tax-supported bonds by the additional pledge of such revenues; providing that tax supported bonds heretofore voted but not yet issued may be issued and sold and the proceeds used for purposes necessary for the carrying out of such contracts without the necessity of another election, and that such bonds may be secured by a levy of taxes and by a pledge of revenues or by either such method; providing for issuance of refunding or re-issued bonds with authority to secure them likewise; providing that if this Act shall be in conflict with any other Act, the provisions of this Act shall be effective; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1879, ch. 12.]

**2. ENCUMBERED CITY SYSTEM**

**Art. 1114d. Validation of bonds for swimming pools**

Section 1. That all bonds heretofore voted and issued or heretofore voted and not yet issued by any city or town in this State for the purpose of constructing swimming pools in said city or town, are hereby

in all things validated, confirmed, and ratified as though they had been legally authorized in the first instance.

Sec. 2. The provisions of this Act shall not operate to validate any bonds or bond elections which, at the time of the effective date of this Act, are involved in litigation, or the validity of which said bonds or bond elections may be attacked in any suit or litigation instituted within thirty (30) days after the effective date of this Act. [Acts 1937, 45th Leg., 2nd C.S., p. 1968, ch. 56.]

Effective Nov. 3, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act validating, ratifying, and confirming all bond issues heretofore voted

and issued or heretofore voted and not yet issued, of all cities and towns in this State, for the purpose of constructing swimming pools; providing certain exceptions; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1968, ch. 56.]

[Art. 1118c. Order of appropriation of revenues of municipal public utility systems]

Section 1. In making up the annual appropriation of the income and revenue of any waterworks system, electric light plant or system, sewer system, or other public utility system, service, or enterprise now or that may be hereafter owned and operated by any city or town having a population of twelve thousand, four hundred and ten (12,410) inhabitants or less, according to the last preceding Federal Census, and owning and operating its municipal light system and municipal waterworks system in this State, the governing body thereof shall first make provision for the maintenance and operating expenses of such system, service, or enterprise, and shall then make provision for payment of principal and interest of any indebtedness outstanding against such system, service, or enterprise, and may then make such appropriations as the remaining income and revenue of such system, service, or enterprise may justify, to be appropriated among the respective departments of the municipal government, or otherwise appropriated for public uses, as such governing body may deem best; provided this Act shall not apply to municipally owned utilities or enterprises, the income from which has heretofore been pledged to secure payment of bonds or other indebtedness.

Sec. 2. Nothing in this Act shall restrict the power and authority of any such city or town to issue bonds, notes, or warrants, payable from revenues other than taxation, for the purposes, in the manner, and under the restrictions and limitations provided by the laws of this State relative to the issuance of such obligations; and all the provisions of such laws shall apply to and govern such city or town and the governing authorities thereof, except as herein otherwise provided.

Sec. 3. The benefits of this Act shall apply to any city or town having a population of twelve thousand, four hundred and ten (12,410) inhabitants or less, according to the last preceding Federal Census, and owning and operating its municipal light system and municipal waterworks system and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof, to a vote of the resident property taxpayers who are qualified voters of said city or town at a special election called for the purpose by the governing body of said city or town. And said election shall be held as nearly as possible in compliance with the laws with reference to regular municipal elections in said city or town; but said governing authority is hereby empowered by resolution to order said election and prescribe the time and manner of holding the same. Said body shall

canvass and determine the result of such election and if a majority of the voters voting upon the question of the adoption of this Act at such election, shall vote to adopt the same, the result of the election shall by said governing body be entered upon their minutes, and thereupon all the terms hereof shall be applicable to and govern such city or town adopting the same; provided, that nothing in this Act shall ever be construed to repeal or modify any of the provisions of Article 1112, of the Revised Civil Statutes of Texas, of 1925. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 2008, ch. 74.]

Effective Nov. 3, 1937.

Section 4 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

#### Art. 1118h. Validating bonds of cities of over 15,000 population

Section 1. All bonds heretofore authorized by the necessary vote of the qualified voters of all cities of more than fifteen thousand (15,000) population according to the last preceding Federal Census and all bond elections held in such cities for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof are hereby validated insofar as any irregularities in following the requirements of the provisions of the General Law that such election shall be held not more than thirty (30) days from the time of such election order are concerned; and irregularities in following the requirements of city charters as to time in the calling and holding of such elections shall not in any manner affect the validity of said bonds, but same shall, if otherwise valid, when approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, be a valid subsisting indebtedness of said cities.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings or to any bonds issued thereunder, the validity of which has been contested or attacked in any pending suit or litigation, or in any suit or litigation which may be instituted within sixty (60) days after the effective date of this Act. [Acts 1937, 45th Leg., p. 5, ch. 5.]

Effective Feb. 4, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

##### Title of Act:

An Act validating, confirming, approving and legalizing all bonds heretofore authorized by the necessary vote of the qualified voters of all cities of more than fifteen thousand (15,000) population according to the last preceding Federal Census and all bond elections held in such cities for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof are hereby validated insofar as any irregularities in following the requirements of the provisions of the General Law that such elections shall be held not more than thirty (30) days from

the date of the election order are concerned; provided that the irregularities in following the requirements of city charters as to time in the calling and holding of such elections shall not in any manner affect the validity of said bonds, but same shall, if otherwise valid, when approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, be valid subsisting indebtedness of said cities; providing that this Act shall not apply to any proceedings or bonds issued thereunder where the validity of such is being contested or attacked in any pending suit or any litigation instituted within sixty (60) days after the effective date of this Act, and declaring an emergency. [Acts 1937, 45th Leg., p. 5, ch. 5.]

#### Art. 1118i. Validating bonds of cities in counties of less than 80,000 and more than 70,000

That in all cases where any city in the State of Texas which operates under the General Laws of Texas and which city is located in any county having a population of less than 80,000 and more than 70,000 according to the last preceding United States Census and is not operat-



ing pursuant to a home rule charter and which such city has heretofore and subsequent to the enactment of Chapter 382,<sup>1</sup> Acts of the First Called Session of the Forty-fourth Legislature of Texas, 1935, submitted to the qualified electors of said city the question of the issuance of the bonds of such city pursuant to the provisions of Articles 1111 et seq., of the Revised Civil Statutes of the State of Texas, said bonds to be payable solely from the revenues derived from operation of the city's waterworks system, and where a majority of the qualified voters of said city voting at said election on said proposition has voted in favor of the issuance of such bonds and in favor of pledging the revenues of said system for the payment of such bonds, said election and all proceedings heretofore had in connection with the calling and holding of said election and in connection with the authorization and sale of such bonds are hereby validated, ratified and confirmed, despite any irregularity which may have occurred therein or despite any failure to observe any of the pertinent laws of the State of Texas, and said city is hereby authorized to complete its proceedings for the authorization and delivery of such bonds and to deliver such bonds upon receipt of the purchase price thereof, and such bonds when approved by the Attorney General, registered by the State Comptroller of Public Accounts, sold at not less than par and accrued interest and delivered are hereby declared to be and shall be the valid and legal obligations of said city in accordance with the terms thereof, and shall be paid as to both principal and interest from the revenues of the waterworks system of said city in accordance with the provisions of the proceedings so authorizing the bonds. Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued there under, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law. [Acts 1937, 45th Leg., p. 14, ch. 13, § 1.]

<sup>1</sup> Article 704.

Effective Feb. 26, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating certain bonds of cities in the State of Texas operating under the General Laws of the State and located in counties having a population of less than 80,000 and more than 70,000 according to the last preceding United States Census, which bonds have been heretofore voted subsequent to enactment of Chapter 382, Acts of the First Called Session of the

Forty-fourth Legislature of Texas, 1935, and which bonds are payable out of the revenues to be derived from the operation of the city's water works system; authorizing the city to complete its proceedings for the authorization, sale, and delivery of such bonds; provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued there under, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law; and declaring an emergency. [Acts 1937, 45th Leg., p. 14, ch. 13.]

**Art. 1118j. Validating bonds and proceedings for loans or grants from Federal government in cities and towns of not over 3,000 population**

Section 1. That all proceedings heretofore had by the governing bodies of all cities and towns, having a population of not more than three thousand (3,000), according to the preceding Federal Census, in the issuance and sale of Revenue bonds, notes or warrants issued under the provisions of Articles 1111 to 1118, Revised Civil Statutes of Texas, as amended, to aid in financing any undertaking, for which a loan or grant has been made by the United States through the Public Works Administration, or any other agency or department of the Government of the United States, in which the only objection to the validity of said bonds

is that such election was ordered and notice thereof given under the provisions of Article 704, Revised Civil Statutes of 1925 prior to the amendment of October 1935, are hereby in that respectively validated, confirmed, approved and legalized, and any such bonds, notes or warrants heretofore sold, or heretofore authorized but not yet delivered, are in all things fully validated, confirmed and approved, and such bonds, notes or warrants are hereby declared to be the valid and binding special obligations of such cities and towns of said population payable from sources other than taxation. All orders, resolutions and ordinances authorizing the issuance of any such revenue bonds by said cities and towns of said population, and setting aside and pledging the revenues of any light system, water system, sewer system or sanitary disposal equipment system, either or all are hereby in all things validated, confirmed and approved, and legalized.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings, or obligations issued thereon, where the validity thereof has been contested or attacked in any suit or pending litigation. Acts 1937, 45th Leg., p. 595, ch. 298.

Effective May 10, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act validating and approving all proceedings had by cities and towns in the State of Texas having a population of not more than three thousand (3,000) according to the preceding Federal Census, in the issuance and sale of revenue obligations under the provisions of Articles 1111 to 1118, Revised Civil Statutes of Texas of 1925 as amended, to aid in financing any undertaking for which a loan or grant has been made by the United States through the Works Progress

Administration, or any other governmental agency, in which the only objection to the validity of said bonds is that such election was ordered and notice thereof given under the provisions of Article 704, Revised Civil Statutes of Texas of 1925 prior to the amendment of October 1935, declaring that such bonds, notes or warrants shall be valid and binding special obligations of such cities or towns, and validating the pledge of revenues to the payment of said obligations; providing this Act shall not apply to any proceedings or obligations, the validity of which has been contested in any pending suit or litigation; and declaring an emergency. [Acts 1937, 45th Leg., p. 595, ch. 298.]

#### Art. 1118k. Validating bonds in cities of over 160,000 population

All bonds heretofore authorized by the necessary vote of the qualified voters of all cities of more than one hundred sixty thousand (160,000) population according to the last preceding Federal Census and all bond elections held in such cities for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof are hereby validated insofar as any irregularities in following the requirements of the provisions of the General Law that such election shall be held not more than thirty (30) days from the time of such election order, and that notice of such election shall be published on the same day of each of two (2) successive weeks in a newspaper, the date of the first publication to be not less than fourteen (14) days prior to the date set for the election, are concerned; and irregularities in following the requirements of city charters as to time in the calling and holding of such elections shall not in any manner affect the validity of said bonds, but same shall, if otherwise valid, when approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, be a valid subsisting indebtedness of said cities. [Acts 1937, 45th Leg., 1st C.S., p. 1749, ch. 5, § 1.]

Effective July 6, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act validating, confirming, approving and legalizing all bonds heretofore authorized by the necessary vote of the

qualified voters of all cities of more than one hundred sixty thousand (160,000) population according to the last preceding Federal Census and all bond elections held in such cities for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof are hereby validated insofar as any irregularities in following the requirements of the provisions of the General Law that such elections shall be held not more than thirty (30) days from the date of the election order, and that notice of such election shall be published on the same day of each of two successive weeks in a newspaper, the date of the first publica-

tion to be not less than fourteen (14) days prior to the date set for the election, are concerned; provided that the irregularities in following the requirements of city charters as to time in the calling and holding of such elections shall not in any manner affect the validity of said bonds, but same shall, if otherwise valid, when approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, be valid subsisting indebtedness of said cities, and declaring an emergency. [Acts 1937, 45th Leg. 1st C. S., p. 1749, ch. 5.]

#### Art. 1118l. Validating bonds and bond elections in cities and towns of 2601 to 2632 population

Section 1. All bonds heretofore authorized by the necessary vote of the qualified voters of all cities and towns having less than two thousand six hundred thirty-two (2632) population and more than two thousand six hundred one (2601) population according to the last preceding Federal Census, and all elections held in such cities and towns for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof are hereby validated, ratified, confirmed and legalized insofar as any irregularities in following the requirements of the provisions of the general law governing the form of election order, notice, ballot and canvassing of returns of such elections are concerned; and, if such bonds are valid in other respects, when same are approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, shall constitute valid and binding obligations of said cities and towns.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings or to any bonds issued thereunder the validity of which is being contested or attacked in any suit pending at the time this Act takes effect. [Acts 1937, 45th Leg., 1st C.S., p. 1755, ch. 10.]

Effective June 28, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

##### Title of Act:

An Act validating, ratifying, confirming and legalizing all bonds heretofore authorized by the necessary vote of the qualified voters of all cities and towns having less than two thousand six hundred thirty-two (2632) population and more than twenty-six hundred one (2601) population according to the last preceding Federal Census, and all bond elections held in such cities and towns for the purpose of voting such bonds insofar as any irregularities in fol-

lowing the requirements of the general law governing the form of election order, notice, ballot and canvassing of returns of such elections are concerned; and providing that if otherwise valid, when approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, shall constitute legal and binding obligations of such cities and towns; providing that this Act shall not apply to any proceedings or bonds, the validity of which is being contested in any suit pending at the effective date of this Act, and declaring an emergency. [Acts 1937, 45th Leg. 1st C.S., p. 1755, ch. 10.]

#### Art. 1118m. Validating waterworks revenue bond elections and bonds in cities and towns of 989 to 1,039 in counties of 98,650 to 98,750

In all instances wherein cities and towns having a population of not more than one thousand and thirty-nine (1,039), and not less than nine hundred and eighty-nine (989), according to the last preceding Federal Census, located in counties having a population of not more than ninety-eight thousand, seven hundred and fifty (98,750) and not less than nine-

ty-eight thousand, six hundred and fifty (98,650), according to the last preceding Federal Census, have heretofore held elections, attempting to comply with the provisions of Articles 1111 to 1118 of the Revised Civil Statutes of Texas of 1925, as amended, for the issuance of waterworks revenue bonds, and have failed to comply with the requirements as to publication and posting of notice of such election, and where such elections have been held resulting in a vote sufficient under the law to authorize the issuance of said bonds, such elections are hereby validated and the bonds thus authorized, when duly approved by the Attorney General and registered by the Comptroller of Public Accounts of the State of Texas, shall constitute valid and binding special obligations of such cities; provided that the provisions of this Section shall not have the effect of validating any elections or the bonds to be issued pursuant thereto which are in litigation at the time of the passage of this Act, or which may be brought into litigation within ninety (90) days after the effective date of this Act. Acts 1939, 46th Leg., Spec.L., p. 1004, § 1.

Effective March 24, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act validating elections heretofore held, authorizing the issuance of waterworks revenue bonds, and the bonds when issued, approved, and registered, under

circumstances prescribed herein, in certain cities; providing that the provisions hereof shall not be applicable in instances wherein litigation exists or which may be brought into litigation within ninety (90) days after the effective date of this Act; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1004.

#### Art. 1118n. Bonds authorized by elections during 1938 in cities or towns not owning certain utilities

Section 1. All bonds heretofore authorized by the necessary vote of the qualified voters of all cities or towns and all bond elections held in such cities or towns for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof, and all orders, resolutions, and ordinances passed or attempted to be passed by the governing body of such cities or towns as shown by the minutes of such governing body, are hereby validated.

Sec. 2. Provided, however, that this Act shall not apply except as to bonds authorized by elections held during the year 1938 in cities or towns which at the time of the holding of such election did not own any of the following utilities from which it could derive revenue: water system, sanitary sewer system, electric light system, or natural gas distribution system.

Sec. 3: Provided further, however, that provisions of this Act shall not apply to any such proceedings or any bonds issued thereunder, the validity of which has been contested or attacked in any pending suit or litigation. Acts 1939, 46th Leg., p. 698.

Effective June 20, 1939.

Section 4 of the Act of 1939 repealed Acts 1939, 46th Leg., Reg.Sess., Spec.L., p. 1009, approved May 11, 1939 and effective May 11, 1939, which contained provisions similar to this Act, except that section 2 of the repealed Act read as follows: "Provided, however, that this Act shall not apply except as to bonds authorized by elections held during the year 1938 in cities or towns which at the time of the holding of such election did not own any public utility, and the value of whose properties for the purpose of taxation as shown by the tax

rolls of said city or town for the year 1938 was not less than Six Million Seven Hundred Eighty Thousand (\$6,780,000.00) Dollars nor more than Six Million Eight Hundred Fifty Thousand (\$6,850,000.00) Dollars."

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act validating, confirming, approving, and legalizing all bonds heretofore authorized by the necessary vote of the qual-

ified voters of all cities or towns at an election; providing this Act shall only apply to bonds authorized by elections held in 1938, and which city or town did not at the time of the holding of said election, or elections, own any of the following utilities from which it could derive revenue: water system, sanitary sewer system, electric light system, or natural gas distribu-

tion system; and providing this Act shall not apply to any such bond the validity of which has been contested or attacked in any pending suit or litigation; repealing Senate Bill 438, Acts of the Regular Session of the Forty-sixth Legislature; and declaring an emergency. Acts 1939, 46th Leg., p. 698.

**Art. 1118n—1. Validating bonds for waterworks and sewer systems in cities operating under general law**

Section 1. That where any city in this State which operated under the general law and does not have a home-rule charter has heretofore submitted to the qualified electors thereof propositions for the issuance of the bonds of such city for the purpose of constructing a waterworks system and a sewer system, such bonds to be payable only from the net revenues of such waterworks system and sewer system and secured by a joint mortgage on the properties of such systems, and such propositions have been declared to have carried, and such city has through ordinances adopted by its governing body authorized the issuance of such bonds and prescribed the details thereof and has thereafter reduced the amount of bonds to be so issued and has submitted to the qualified electors thereof propositions for the issuance of the bonds of such city payable from ad valorem taxes for the purpose of constructing a waterworks system and a sewer system, the amount of tax bonds to be so issued being equal to the amount of revenue bonds originally authorized and theretofore determined not to be issued, and such propositions have been declared to have carried, all of the proceedings heretofore had by such city, including all proceedings had and acts done in connection with the calling and holding of the election on the revenue bonds, the proceedings of the governing body authorizing the issuance of such bonds, the indenture authorized and executed to secure such bonds, the ordinance authorizing the issuance of such bonds, the proceedings had reducing the amount of the revenue bonds, the supplemental indenture authorized or executed for the purpose of reducing the amount of such issue, and the proceedings had in connection with the calling and holding of the election on the question of the issuance of the ad valorem tax bonds, despite any failure or failures in such proceedings to comply with the provisions of the pertinent statutes, are hereby ratified, validated and confirmed.

Sec. 2. That the governing body of each such city is authorized to adopt all proceedings necessary or desirable to complete the issuance of the revenue bonds and the ad valorem tax bonds so authorized, to make such changes as it may consider desirable in the existing proceedings and in the details of the bonds as they have been authorized by the existing proceedings, and to do everything necessary to the issuance of revenue bonds and ad valorem tax bonds in the amounts so authorized and to secure the revenue bonds by mortgage on the properties of the water and sewer systems, in all respects as provided by the statutes relating to the issuance of such bonds.

Sec. 3. That the revenue bonds and ad valorem tax bonds of any such city when delivered and paid for pursuant to such existing proceedings, as such proceedings may hereafter be altered or amended, shall be and are hereby declared to be valid and binding obligations of such city in accordance with the terms thereof.

Sec. 4. That all proceedings heretofore had in connection with the incorporation of any such city are hereby validated, ratified and confirmed and every such city is hereby declared to be a legally incorporated

and subsisting municipal corporation of the State of Texas operating under the provisions of Title 28 of the Revised Civil Statutes of 1925.

Sec. 5. That where any such city has not yet levied taxes on the taxable property in such city, but where the City Tax Assessor has prepared an unrendered roll for any year, using as the basis for such roll the valuation of the taxable property in said city as taken from state, county or school district rolls for such year, and where the governing body of the city has approved such roll and has fixed the percentage basis of assessed valuation to actual valuation, the assessed valuation of taxable property in such city as so determined is hereby declared to be the true and correct assessed valuation of taxable property in such city for such year and such assessment roll is declared to be and is authorized to be used as the basis for the imposition of taxes in such city until the assessed valuation of taxable property in such city for the succeeding year has been determined. Acts 1939, 46th Leg., p. 691.

Effective April 19, 1939.

Section 6 of the Act of 1939 repeals all conflicting laws and parts of laws; section 7 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act validating proceedings heretofore had by certain cities in Texas, other than home-rule cities, for the issuance of revenue bonds and ad valorem tax bonds for the purpose of procuring funds to construct waterworks and sewer systems for such cities, validating the bonds to be is-

sued pursuant to such proceedings and the indentures executed and to be executed as a security for such bonds, authorizing the adoption of the proceedings necessary to complete the issuance of such bonds, validating proceedings had in the incorporation of such cities, providing the manner in which the assessed valuation of taxable property may be determined in such of said cities as have not heretofore levied taxes, repealing all conflicting acts, and declaring an emergency. Acts 1939, 46th Leg., p. 691.

**Art. 1118n—2. Validating revenue and ad valorem tax bonds and proceedings for waterworks and sewer systems in other than home-rule cities**

Section 1. That where any city in this State which operates under the General Law and does not have a home-rule charter has heretofore submitted to the qualified electors thereof propositions for the issuance of the bonds of such city for the purpose of constructing a waterworks system and a sewer system, such bonds to be payable only from the net revenues of such waterworks system and sewer system and secured by a joint mortgage on the properties of such systems, and such propositions have been declared to have carried, and such city has through ordinances adopted by its governing body authorized the issuance of such bonds and prescribed the details thereof and has thereafter reduced the amount of bonds to be so issued and has submitted to the qualified electors thereof propositions for the issuance of the bonds of such city payable from ad valorem taxes for the purpose of constructing a waterworks system and a sewer system, the amount of tax bonds to be so issued being equal to the amount of revenue bonds originally authorized and theretofore determined not to be issued, and such propositions have been declared to have carried, all of the proceedings heretofore had by such city, including all proceedings had and acts done in connection with the calling and holding of the election on the revenue bonds, the proceedings of the governing body authorizing the issuance of such bonds, the indenture authorized and executed to secure such bonds, the ordinance authorizing the issuance of such bonds, the proceedings had reducing the amount of the revenue bonds, the supplemental indenture authorized or executed for the purpose of reducing the amount of such issue, and the proceedings had in connection with the calling and holding of the election on the

question of the issuance of the ad valorem tax bonds, despite any failure or failures in such proceedings to comply with the provisions of the pertinent Statutes, are hereby ratified, validated, and confirmed.

Sec. 2. That the governing body of each such city is authorized to adopt all proceedings necessary or desirable to complete the issuance of the revenue bonds and the ad valorem tax bonds so authorized, to make such changes as it may consider desirable in the existing proceedings and in the details of the bonds as they have been authorized by the existing proceedings, and to do everything necessary to the issuance of revenue bonds and ad valorem tax bonds in the amounts so authorized and to secure the revenue bonds by mortgage on the properties of the water and sewer systems, in all respects as provided by the Statutes relating to the issuance of such bonds.

Sec. 3. That the revenue bonds and ad valorem tax bonds of any such city when delivered and paid for pursuant to such existing proceedings, as such proceedings may hereafter be altered or amended, shall be and are hereby declared to be valid and binding obligations of such city in accordance with the terms thereof.

Sec. 4. That all proceedings heretofore had in connection with the incorporation of any such city are hereby validated, ratified, and confirmed and every such city is hereby declared to be a legally incorporated and subsisting municipal corporation of the State of Texas operating under the provisions of Title 28 of the Revised Civil Statutes of 1925.

Sec. 5. That where any such city has not yet levied taxes on the taxable property in such city, but where the City Tax Assessor has prepared an unrendered roll for any year, using as the basis for such roll the valuation of the taxable property in said city as taken from State, county, or school district rolls for such year, and where the governing body of the city has approved such roll and has fixed the percentage basis of assessed valuation to actual valuation, the assessed valuation of taxable property in such city as so determined is hereby declared to be the true and correct assessed valuation of taxable property in such city for such year and such assessment roll is declared to be and is authorized to be used as the basis for the imposition of taxes in such city until the assessed valuation of taxable property in such city for the succeeding year has been determined. Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law, or which may be filed within thirty (30) days after this Act becomes a law. Acts 1939, 46th Leg., p. 695.

Effective April 5, 1939.

Section 6 of the Act of 1939 repeals all conflicting laws and parts of laws; section 7 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act validating proceedings heretofore had by certain cities in Texas, other than home-rule cities, for the issuance of revenue bonds and ad valorem tax bonds for the purpose of procuring funds to construct waterworks and sewer systems for such cities, validating the bonds to be issued pursuant to such proceedings and the indentures executed and to be executed

as security for such bonds, authorizing the adoption of the proceedings necessary to complete the issuance of such bonds; validating proceedings had in the incorporation of such cities; providing the manner in which the assessed valuation of taxable property may be determined in such of said cities as have not heretofore levied taxes; providing the Act shall not apply to any proceedings, levies, or to any bonds or warrants, the validity of which has been attacked in suit or litigation now pending or which may be filed within thirty (30) days after this Act takes effect; repealing all conflicting Acts; and declaring an emergency. Acts 1939, 46th Leg., p. 695.

**Art. 11180—1. Validating acts and proceedings of cities in borrowing money from Federal Agencies to repair or extend dam for waterworks system**

In all cases where any city or town in this State has borrowed money from The Reconstruction Finance Corporation or any other agency of the United States Government, for the purpose of making repairs and extensions, or either, to a dam comprising a part of the waterworks system of said city or town, which the city or town has agreed to repay out of the revenues of said waterworks system, all acts performed by the city officials and all proceedings had by the governing bodies of such cities or towns in connection therewith are hereby validated, and all money so borrowed by such city or town together with the interest thereon at the rate stipulated in such proceedings is hereby declared to be a legal obligation of such city or town, payable out of the revenues of its waterworks system. The fact that a vacancy existed in the office of Mayor during all or any part of such proceedings, or the fact that other revenue obligations were then and are now outstanding against such system shall not affect the obligations and proceedings hereby validated. Acts 1939, 46th Leg., p. 694, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate acts of city officials and proceedings of city governing bodies in borrowing money from The Reconstruc-

tion Finance Corporation or other agencies of the United States Government for the purpose of making repairs and extensions, or either, to a dam comprising part of a waterworks system; declaring money so borrowed with interest thereon to be a legal obligation of such city or town payable from the revenues of its waterworks system; and declaring an emergency. Acts 1939, 46th Leg., p. 694.

### 3. CITY REGULATION

**Art. 1119. [1018] Rates prescribed, etc.**

The governing body of all incorporated cities and towns in this State incorporated under the General Laws thereof shall have the power to regulate, by ordinance, the rates and compensation to be charged by all persons, companies, or corporations using the streets and public grounds of said city or town, and engaged in furnishing water, gas, telephone, light, power, or sewerage service to the public, and also to prescribe rules and regulations under which such commodities shall be furnished, and service rendered, and to fix penalties to enforce such charges, rules, and regulations. The governing body shall not prescribe any rate or compensation which will yield more than a fair return upon the fair value of the property used and useful in rendering its service to the public, but which return in no event shall ever exceed eight (8) per cent per annum. As amended Acts 1937, 45th Leg., p. 274, ch. 144, § 1.

Amendment of 1937, effective April 12, 1937.

Section 2 of the amendatory Act of 1937 repeals all conflicting laws and parts of laws, section 3 provides that if any

provision is held unconstitutional, such invalidity shall not affect the other provisions and section 4 declares an emergency making the act effective on and after its passage.

## CHAPTER ELEVEN—TOWNS AND VILLAGES

**Art. 1152. 1060, 611, 538 Publication of ordinances**

Publication of ordinances enacted by Home Rule cities, see art. 1176b—1.



## CHAPTER TWELVE—COMMISSION FORM OF GOVERNMENT

## Art. 1154. 1070 Petition

Town or village under commission form of government having assessed valuation of taxable property of \$500,000, or more, may adopt powers of cities and towns, see art. 961b—1.

## Art. 1164. [1076] Meetings and salary

Said Board shall hold at least one regular monthly meeting, and the mayor or two (2) commissioners may call as many special meetings as may be necessary to attend to the municipal business. Each commissioner and said mayor shall receive for his service Five Dollars (\$5) per day for each regular meeting, and Three Dollars (\$3) per day for each special meeting. The mayor or any commissioner shall not receive pay for more than five (5) special meetings in any one month. In lieu of such per diem said "Board of Commissioners" of any such town or city with not less than two thousand (2,000) population, may fix the salary to be received by the mayor and commissioners, not to exceed the sum of Twelve Hundred Dollars (\$1200) per year for said mayor and Six Hundred Dollars (\$600) per year for each commissioner.

In lieu of such per diem said "Board of Commissioners" of any such town or city containing less than two thousand (2,000) population, according to the last preceding Federal Census, may fix salary to be received by the mayor not to exceed the sum of Six Hundred Dollars (\$600) per year. [As amended Acts 1937, 45th Leg., p. 658, ch. 326, § 1.]

Effective May 13, 1937.

Section 2 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

## CHAPTER THIRTEEN—HOME RULE

- Art.  
1174c. Validating annexation of adjacent territory [New].  
1174d. Validation of annexation proceedings in Home Rule cities of 8,920 to 9,580 population [New].  
1175b. Inspection and test of motor vehicles [New].

- Art.  
1176b—1. Publication of ordinances enacted by Home Rule cities [New].  
1176b—2. Validation of ordinances of Home Rule cities published in compliance with charters [New].  
1182f. Validating certain tax proceedings [New].

## Art. 1174c. Validating annexation of adjacent territory

Section 1. All elections, election orders, election proceedings, city ordinances and amendments to charters annexing adjacent territory to, or extending and prescribing the corporate limitations of any home rule city that has adopted a charter under Article 11, Section 5, of the Constitution of the State of Texas, and the provisions of Chapter 147, Acts of the Regular Session of the Thirty-third Legislature of the State of Texas, 1913, and Article 1175 of Vernon's Annotated Texas Statutes, by which said city did not in fact have separate elections and separate election boxes for the city voters and the territory to be annexed, and did not comply with other requirements of the law, be and the same are hereby validated and confirmed.

Sec. 2. The city ordinances and charter amendments of all home rule cities in the class described in the foregoing section, fixing and prescribing the corporate limits extended by the annexation or attempted annexation

tion of adjacent territory are hereby validated. [Acts 1936, 44th Leg., 3rd C.S., p. 2102, ch. 506.]

Effective Oct. 31, 1936.

**Title of Act:**

An Act to validate all proceedings, orders, resolutions and city ordinances and amendments to charters annexing adjacent territory to, or extending and prescribing the corporate limitations of any home rule city that has adopted a Charter under Article 11, of Section 5, of the Constitution of Texas, and the provisions of Chapter 147, Acts of the Regular Session of the Thirty-third

Legislature of the State of Texas, 1913, and Article 1175 of Vernon's Annotated Statutes, by which said city did not, in fact, comply with all requirements of the law regarding the annexation of such territory, such as holding separate elections for those to be voted in and the rest of the city, and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 2102, ch. 506.]

**Art. 1174d. Validation of annexation proceedings in Home Rule cities of 8,920 to 9,580 population**

That all ordinances and proceedings and all actions, proceedings, and contracts taken or made in pursuance thereof, heretofore undertaken by virtue of Article 1175, Revised Civil Statutes of Texas of 1925, providing for the extension of the corporate limits of Home Rule cities by any city which at such time was acting under a Home Rule charter, and which such ordinances, actions, proceedings, and contracts were undertaken prior to April 1, 1930, are hereby ratified and confirmed, and such extensions of the city limits of such cities so undertaken, as well as all proceedings and contracts taken or made in pursuance thereof and the exercise of dominion and governmental functions over such added territory by extension shall be deemed and held valid in all respects and to the same extent as if done under legislative authority previously given. The provisions of this Act shall apply only to cities having a population of not less than eight thousand, nine hundred and twenty (8,920) nor more than nine thousand, five hundred and eighty (9,580), according to the last preceding Federal Census. [Acts 1937, 45th Leg., 2nd C.S., p. 1904, ch. 27, § 1.]

Effective Oct. 27, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate annexation proceedings of Home Rule cities where such an-

nexation proceedings took place prior to April 1, 1930; and validating all proceedings, actions, and contracts and the exercise of dominion and governmental functions over such annexed territory; and declaring an emergency. [Acts 1937, 45 Leg., 2nd C.S., p. 1904, ch. 27.]

**Art. 1175. Enumerated powers**

Power to levy taxes, taxes levied by counties and other subdivisions not considered in determining, see art. 1066a.

**Art. 1175b. Inspection and test of motor vehicles**

Section 1. All cities and towns in the State of Texas, whether incorporated under general or special law, including home rule cities, having a population in excess of two hundred and ninety thousand (290,000) inhabitants, according to the last preceding or any future Federal Census, shall have and they are hereby given the power and authority to pass an ordinance or ordinances;

(a) Requiring all residents of said city, including corporations having their principal office or place of business in said city, owning a motor vehicle used for the transportation of persons or property, or both, and all persons using the streets, alleys, or other public thoroughfares of said city upon which to operate a motor vehicle, to have each and every such motor vehicle tested and inspected and to comply with such requirements,

as may be imposed by said ordinance, not more than four times in each calendar year;

(b) Requiring that other and additional tests and inspections may be required of all motor vehicles involved in any wreck, collision, or accident before the same may be operated on the streets, alleys, or other public thoroughfares of said city after said wreck, collision, or accident;

(c) Requiring as a condition precedent to the right to use the streets, alleys, or other public thoroughfares of said city that motor vehicles operated thereupon shall have been tested and inspected, shall have been approved by said testing and inspecting authorities, and shall have complied with all provisions of said ordinance;

(d) Providing a penalty subject to the limitations of Article 1011 of the Revised Civil Statutes of the State of Texas for the violation of any of the terms of said ordinance.

Sec. 2. Said cities shall be and they are hereby authorized to acquire, establish, erect, equip, improve, enlarge, repair, operate, and maintain motor vehicle testing stations and to pay for the same out of the fees charged for testing and inspecting said motor vehicles.

Sec. 3. Said cities shall have and they are hereby given power and authority to prescribe and collect a fee, not to exceed One Dollar (\$1) per year per vehicle, for the testing and inspecting of each such motor vehicle. All fees so collected to be placed in a separate fund, out of which costs and expenses in connection with, or growing out of the acquisition, establishment, erection, equipping, improvement, enlargement, repairing, operating, and maintaining said testing stations, and automotive and Safety Education programs, may be paid.

Sec. 4. Said cities shall have and they are hereby given power and authority to pay for such testing stations and the equipping, maintaining, and operating thereof out of past or future earnings of said stations, and may mortgage and encumber said stations and everything pertaining thereto acquired, to secure the payment of funds to construct the same or any part thereof, or to erect, equip, improve, enlarge, repair, operate, or maintain said stations. No such mortgage or encumbrance shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of such city to issue bonds for any purpose authorized by law. Said cities may borrow money and issue warrants to finance in whole or in part the cost of the acquisition, erection, equipping, improvement, enlargement, or repair of said stations and to pledge for the punctual payment of said warrants and interest thereon all or any part of the fees or other receipts derived from the operation of such stations.

Sec. 5. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circumstance, is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity or unconstitutionality.

Sec. 5a. Nothing herein or in any ordinance passed pursuant hereto shall apply to motor vehicles, trailers or semitrailers operated under a certificate or permit from the Railroad Commission of Texas.

Sec. 6. All laws and parts of laws in conflict herewith shall be and the same are hereby repealed to the extent of said conflict only. [Acts 1937, 45th Leg., p. 194, ch. 102.]

Effective April 6, 1937.

Section 7 of this Act declared an emergency making the act effective on and after its passage.

Title of Act:

An Act empowering and authorizing cities and towns in the State of Texas having a population in excess of two

hundred and ninety thousand (290,000) inhabitants, according to the last preceding or any future Federal Census, to enact ordinances governing operation of all motor vehicles upon the public thoroughfares of such cities; providing that said ordinances may require testing and inspecting such motor vehicles at stated times and approval by the testing and inspecting authorities; providing certain exceptions thereto; permitting the fixing of penalties for violating said ordinances; authorizing such cities to acquire, establish, erect,

equip, improve, enlarge, repair, operate, and maintain motor vehicle testing stations to prescribe and collect a fee for such tests and for the disposition of such fees; authorizing said cities to mortgage or encumber said stations to borrow money and issue warrants to finance said stations and to pledge said fees and receipts for payment of said indebtedness; providing a saving clause; repealing all conflicting laws and declaring an emergency. [Acts 1937, 45th Leg., p. 194, ch. 102.]

**Art. 1176a. Code of Civil or Criminal ordinances in cities of more than 100,000**

**Section 1.** That any city in this State having a population of more than forty thousand (40,000), according to the then preceding United States Census, whether incorporated under General or Special Law, shall have the power to codify its civil and criminal ordinances, and adopt a civil and criminal code of ordinances, together with appropriate penalties for the violation thereof, which said code when adopted shall have the force and effect of an ordinance regularly enacted with the usual prerequisites of law. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 2004, ch. 71, § 1.]

Effective 90 days after Oct. 26, 1937, date of adjournment.

declared an emergency and provided that the act should take effect from and after its passage.

Section 2 of the amendatory act of 1937

**Art. 1176b—1. Publication of ordinances enacted by Home Rule cities**

**Section 1.** That hereafter all ordinances passed by Home Rule Cities in the State of Texas organized and operating under the provisions of the Home Rule Amendment to the Constitution of the State of Texas, and under Title 28, Chapter 13, of the Revised Civil Statutes of Texas, 1925, shall be published only as provided by the charters of such cities, provided that if there is no provision in the charter for the publication of such ordinances, then every ordinance passed by such Home Rule Cities prescribing penalties for the violation thereof shall, before the ordinance is passed, be published at least twice in the official newspaper of the city.

**Sec. 2.** The provisions of this Act shall be cumulative of all laws on this subject and wherever the provisions of this Act are in conflict with any existing law or laws on this subject, the provisions hereof, in so far as same are in conflict with any existing law or laws, shall govern and control. Acts 1939, 46th Leg., p. 112.

Effective April 15, 1939.

Section 3 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing that all ordinances hereafter enacted by Home Rule Cities in the State of Texas, organized and operating under the Home Rule Amendment to the Constitution of the State of Texas, and

the provisions of Title 28, Chapter 13, of the Revised Civil Statutes of Texas, 1925, shall be published as provided in the charters of such cities and establishing rule for publication of ordinances prescribing penalties where charter does not provide for such publication; providing this Act shall be cumulative of other laws; and declaring an emergency. Acts 1939, 46th Leg., p. 112.

**Art. 1176b—2. Validation of ordinances of Home Rule cities published in compliance with charters**

That all Ordinances heretofore passed by Home Rule Cities organized and operating under the provisions of Home Rule Amendment to

the Constitution of the State of Texas, and under the provisions of Title 28, Chapter 13, Revised Civil Statutes of Texas, 1925, where such Ordinances have been passed in compliance with the provisions of the charters of said cities and have been duly published, as required by such charters, be and the same are hereby validated, ratified and confirmed, and are hereby declared to be in full force and effect, in so far as the required publication is concerned, as if published in strict compliance with all of the requirements of the General Laws of the State of Texas; provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, nor to ordinances passed and published in violation of the method and procedure prescribed in said charters, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law, or which may be filed within ninety (90) days after this Act becomes a law; provided further, that any person, whose rights are adversely affected by an ordinance hereafter enacted in violation of said charter, shall be entitled to injunctive relief in any court of competent jurisdiction upon proper application and satisfactory proof. Acts 1939, 46th Leg., p. 693, § 1.

Effective April 15, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act validating all Ordinances of Home Rule Cities in Texas incorporated and operating under the provisions of the Home Rule Amendment to the Constitution of the State of Texas and under Title 28, Chapter 13 of the Revised Civil Statutes of Texas, 1925, where such Ordinances have

been enacted in compliance with the Charters of such Home Rule Cities; providing that this Act shall not apply to ordinances, levies or to bonds or warrants issued thereunder, the validity of which has been or will be attacked by suit filed within ninety (90) days after effective date of Act; and granting to persons adversely affected by ordinances hereafter enacted in violation of provisions of said Charter injunctive relief; and declaring an emergency. Acts 1939, 46th Leg., p. 693.

[Art. 1182e. Exposition or convention halls in cities of 290,000]

[Provision for trustee]

Sec. 6. A contract of encumbrance may provide for the selection of a Trustee to make sale upon the default of principal or interest or otherwise according to the terms of such contract and for the selection of his successor, if disqualified or failing to act, and for collection of fees not exceeding five (5) per cent of the principal. If such contract provides for the appointment of a Receiver, the Trustee, in the event of any default in the payment of principal and interest or otherwise under such contract, continuing for a period of thirty (30) days, may apply to the proper Court for the appointment of a Receiver. A Receiver so appointed may, subject to the order of the Court, enter and take possession of the properties and operate and maintain them and apply the net revenue to the liquidation of the debt. The Receiver may maintain and operate the properties and may use or rent any part of the properties for any purpose consistent with the continued use of the major part as an exposition and convention hall or, if so authorized by the Court, may rent all the properties for any lawful use, and all of such properties shall continue to be free from taxation until the indebtedness secured thereby is fully paid. The Receiver may rent any part or all of such properties to the city, and the city may lease the same from the Receiver. All rights of the Receiver and of any lessees or other persons holding under him shall cease when the indebtedness is paid or if the Trustee, in the exercise of its powers, shall sell the properties, provided that the Trustees may agree with any lessee of the properties from the Receiver not to sell the property during the term of his lease; provided also that if

the principal of all the bonds shall not have been declared due or if such declaration being made shall have been annulled under the provisions of the contract of encumbrance, the rights of the Receiver may be terminated and the Receiver discharged by remedy or waiver of the default and upon application to the Court, and in such event the rights of any lessee from the Receiver shall be subject to adjudication and may be terminated or adjusted by the Court. [As amended Acts 1937, 45th Leg., p. 614, ch. 307, § 1.]

Amendment of 1937, effective May 12, 1937.

Section 3 of the amendatory Act de-

clared an emergency and provided that the Act should take effect from and after its passage.

#### [Validation of proceedings, mortgages, and bonds]

Sec. 6-a. Any proceedings taken by any such city under such Act and any mortgage or bonds heretofore authorized reciting the authority of such Act are hereby in all respects validated and confirmed as fully for all purposes as though duly and legally taken and authorized under such Act as now amended. [As added Acts 1937, 45th Leg., p. 614, ch. 307, § 2.]

Effective May 12, 1937.

#### Art. 1182f. Validating certain tax proceedings

Section 1. That all elections, election orders, election proceedings, and city ordinances by which any city or town having a home rule charter has attempted to amend said charter so as to eliminate any requirement in said charter that any portion of the annual ad valorem tax levied in said city or town shall be provided for or set apart for the use of the Public Free Schools in said city or town, which election resulted in a majority of the votes cast being favorable to the amendment of said charter, shall be deemed and held valid in all respects and to the same extent as if each and all things done by said city or town in attempting to amend said charter had been done and performed in strict compliance with law, and each such charter amendment so adopted or attempted to be adopted are hereby fully validated, ratified, and confirmed, and are hereby declared to be in full force and effect as if adopted in strict compliance with all the requirements of the laws of the State of Texas and the charters of such cities and towns.

Sec. 2. Further provided that this Act shall only apply to cities and towns acting under a home rule charter and which charter sought to be amended provided that a portion of the annual ad valorem taxes levied shall be set apart for the use of the Public Free Schools; and further provided that this Act shall not apply to such cities and towns unless, prior to the voting of said amendment, the control of the Public Free Schools in such cities and towns had been separated from the jurisdiction of said cities and towns and such Public Free Schools were at the time of the holding of such election being operated under the control and jurisdiction of an independent school district. Acts 1939, 46th Leg., p. 700.

Effective June 20, 1939.

Section 3 of the Act repealed Acts 1939, 46th Leg., Spec.L., p. 1007, approved and effective May 15, 1939, which contained provisions identical to p. 700, set out in the text of this article, except section 2 which read as follows: "Sec. 2. Further provided that this Act shall only apply to cities and towns acting under a home rule charter and which charter sought to be amended provides that a portion of the annual

ad valorem taxes levied shall be set apart for the use of the Public Free Schools; and further provided that this Act shall not apply to such cities and towns unless such amendment to the charter was voted during the year 1938 and prior to the voting of said amendment the control of the Public Free Schools in such cities and towns had been separated from the jurisdiction of said cities and towns and such Public Free Schools were at the time of

the holding of such election being operated under the control and jurisdiction of an independent school district; nor shall this Act be effective as to any city or town which had not during the year 1938 and prior to the voting of said charter amendment held an election in which a majority of the votes cast authorized the issuance by said city or town of bonds to secure funds for making public improvements, nor to any city or town in which the assessed value of property for the purpose of taxation as shown by the tax rolls of said city or town for the year 1938 was not less than Six Million Seven Hundred Eighty Thousand (\$6,780,000.00) Dollars nor more than Six Million Eight Hundred Fifty Thousand (\$6,850,000.00) Dollars."

Section 4 read as follows: "Provided, however, that the provisions of this Act shall not apply to any such proceedings, the validity of which has been contested or attacked in any pending suit or litigation."

Section 5 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act validating and approving all proceedings had by cities and towns having a

home rule charter in amending said charters so as to eliminate any requirements in said charter that any portion of the annual ad valorem tax levied in said city or town shall be provided for or set apart for the use of the Public Free Schools in said city or town; provided this Act shall only apply to cities and towns acting under a home rule charter and which charter sought to be amended provided that a portion of the annual ad valorem taxes levied shall be set apart for the use of the Public Free Schools; and further provided that this Act shall not apply to such cities and towns unless, prior to the voting of said amendment, the control of the Public Free Schools in such cities and towns had been separated from the jurisdiction of said cities and towns and such Public Free Schools were being operated under the control and jurisdiction of an independent school district; and repealing Senate Bill No. 439, Acts of the Regular Session of the Forty-sixth Legislature; and further provided this Act shall not apply to any such proceedings the validity of which has been contested or attacked in any pending suit or litigation; and declaring an emergency. Acts 1939, 46th Leg., p. 700.

## CHAPTER SIXTEEN—CORPORATION COURT

**Art.**

1200a. Two corporation courts authorized in cities having over 285,000 population [New].

**Art. 1200a. Two corporation courts authorized in cities having over 285,000 population.**

Section 1. All incorporated cities of this State having a population in excess of two hundred and eighty-five thousand (285,000), according to the last preceding United States Census, may, by an ordinance legally adopted, provide for the establishment of two Corporation Courts.

Sec. 2. Each of such Corporation Courts, when established, shall have and exercise concurrent jurisdiction within the corporate limits of the city establishing them, and such jurisdiction shall be the same as is now or hereafter may be conferred upon all Corporation Courts by the General Laws of this State.

Sec. 3. The governing body of the city establishing such Courts may provide by ordinance:

(1) Prescribe the qualifications of the persons to be eligible to appointment as Recorder of said Court or Courts.

(2) That such Courts and the Recorders thereof may transfer cases from one Court to another, and that any Recorder of any of such Courts may exchange benches and preside over any of such Courts.

(3) That there shall be a Corporation Court Clerk who shall be Clerk for all of such Corporation Courts, together with such number of deputies as may be needed.

(4) That complaints shall be filed with such Corporation Court Clerk in such manner as to provide for an equal distribution of cases among such Courts.

Sec. 4. Except as modified by the terms of this Act, the procedure before such Courts and appeals therefrom shall be governed by the General Law applicable to all Corporation Courts.

Sec. 5. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only, and this Act shall supersede any provisions of any special charters of cities which are contrary to the terms hereof.

Sec. 6. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, the validity of the remaining portions shall not be affected thereby, it being the intent of the Legislature in adopting this Act that no portion shall become inoperative by reason of the invalidity of any other portion. Acts 1939, 46th Leg., p. 92.

Effective March 15, 1939.

Section 7 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act enabling cities of over two hundred and eighty-five thousand (285,000) population, according to the last preceding United States Census, to establish two (2) Corporation Courts; providing such Courts shall have the usual jurisdiction now given to Corporation Courts by the General Laws of the State of

Texas, enabling cities to prescribe the qualifications of the Recorder of said Courts; providing that cases may be transferred from one Court to the other; providing that there shall be one Corporation Court Clerk; providing that complaints shall be filed to assure equal distribution of cases; providing that the procedure shall be as provided by the General Law of Texas; repealing all laws in conflict herewith; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., p. 92.

## CHAPTER TWENTY—MISCELLANEOUS PROVISIONS

Art.

1269j—1. Validating interest bearing time warrants issued to finance airports or airport improvements by cities having over 285,000 population [New].

Art.

1269j—2. Cities of 285,000; extending limits for purposes named to include airports, etc. [New].

Art. 1269j—1. Validating interest bearing time warrants issued to finance airports or airport improvements by cities having over 285,000 population

All interest-bearing time warrants heretofore authorized by ordinance of the governing body of any city in Texas having a population of two hundred and eighty-five thousand (285,000) or more according to the latest United States Census, issued or authorized to be issued in payment or part payment for the construction of administration buildings, hangars, and hangar doors for its airport and/or to improve, enlarge, extend, or repair its airport, are hereby validated, ratified, and legalized, and such warrants shall not be invalid on account of irregularities in the notice to bidders, and shall not be invalid because the notice to bidders did not contain notice that it was the intention of the governing body to pay for such improvements and the contracts therefor by the issuance of time warrants. The contracts for such improvements and payment therefor by the issuance of interest-bearing time warrants shall not be invalid on account of the notice to bidders not containing a clause to the effect that it was the intention to pay for such improvements and the contracts therefor by the issuance of interest-bearing time warrants and stating the maximum amount, interest rate, and maximum maturity date of such contemplated warrants. This Act shall apply to such warrants and the contracts on which they are based whether such warrants shall have been completely issued,



or whether they have been authorized by ordinance and not as yet completely issued; and in so far as they have not as yet been completely issued, the governing body of such city is authorized in due course to complete the issuance thereof. Acts 1939, 46th Leg., Spec.L., p. 1006, § 1.

Effective March 3, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating all interest-bearing time warrants heretofore authorized by cities having a population of two hundred and eighty-five thousand (285,000) or more according to the latest United States Census, issued or authorized to be issued in payment or part payment for the construction of administration buildings, hangars, and hangar doors for its airport and/or to improve, enlarge, extend, or repair its airport; providing that such warrants shall not be invalid on account of irregularities in the notice to bidders or because the notice to bidders did not contain notice that it was the intention of

the governing body to pay for such improvements and the contracts therefor by the issuance of time warrants; providing that the contracts for such improvements and payment therefor by the issuance of interest-bearing time warrants shall not be invalid on account of the notice to bidders not containing a clause to the effect that it was the intention to pay for such improvements and the contracts therefor by the issuance of time warrants; providing this Act shall apply to such warrants and the contracts on which they are based whether such warrants shall have been completely issued or whether they have been authorized by ordinance and not as yet completely issued, and authorizing their completion; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1006.

**Art. 1269j—2. Cities of 285,000; extending limits for purposes named to include airports, etc.**

Section 1. For the purpose of securing and maintaining the safe and efficient operation and maintenance of all publicly owned or publicly operated airports, flying fields, and landing fields located within a distance of ten (10) miles computed by air line from the then existing city limits of any city in the State of Texas having a population of two hundred and eighty-five thousand (285,000) inhabitants or more according to the last preceding or any future Federal Census, and to protect the safety, lives, and property of persons owning property in the vicinity of such airports, flying fields, and landing fields, from and after the passage of this Act, the right, power, and authority is hereby given to the City Council of such cities to extend the limits of said cities for the purposes named in this Act, so as to include within its limits all publicly owned or publicly operated airports, flying fields, and landing fields lying within a distance of ten (10) miles in an air line from the then existing city limits and, in addition thereto, to include all lands within a distance not to exceed three thousand (3,000) feet from the exterior limits of such airports, flying fields, and landing fields, by the passage of an ordinance extending the boundaries of such cities to include the territory aforesaid, or so much thereof as the City Council may consider advisable to add to the limits of said city, and such intervening land as the City Council may deem necessary and proper to accomplish the purposes of this Act.

Sec. 2. From and after the passage of said ordinance, extending the limits as aforesaid, by the City Council of such cities, said City Council shall have the right, power, and authority to, by criminal ordinance and otherwise, pass such ordinances under the general police power as may be necessary to promote and protect the safe and efficient operation of said publicly owned or operated airports, flying fields, or landing fields only, and to promote and protect all airplanes and other flying craft in taking off from and landing at said airports, flying fields, or landing fields, and particularly including the right to regulate and limit the height of any building or other structure of whatever nature to be erected, and to be located, within a distance of three thousand (3,000) feet

from the exterior limits of such airport, flying field, or landing field, to a height not to exceed thirty (30) feet within a radius of one thousand (1,000) feet surrounding said airport, and, to a height not to exceed seventy-five (75) feet from said one thousand (1,000) feet back to within said three thousand (3,000) feet, meaning from the ground level to the highest portion of any such building or structure.

Sec. 3. Said cities shall have no right, under this Act, to tax the property over which such boundaries are so extended, unless and until such property be within the line and limits of the general city limits or boundaries.

Sec. 4. Nothing in this Act shall prevent the extension of the general and ordinary limits of such cities for all municipal purposes if and when same may be legally done.

Sec. 5. The power herein granted shall not authorize the extension of the territory of any city for the limited purposes named so as to include any land which is already part of any other city or town corporation, whether incorporated under the General Laws or under Special Laws, or any land at the time belonging to any other city or town. Acts 1939, 46th Leg., p. 95.

Effective July 7, 1939.

Section 6 of the Act of 1939 read as follows: "The provisions of this Act are severable, and in the event that any provision thereof should be declared void or unconstitutional, it is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the invalidity of any particular provision or provisions in any respect, and said Sections shall remain in full force and effect."

Section 7 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing cities having a population of two hundred and eighty five thousand (285,000) inhabitants, or more, according to the last preceding or any future Federal Census, to extend by ordinance their boundary so as to include in such cities all publicly owned or publicly operated airports, flying fields, and landing fields lying within a distance of ten (10)

miles in air line from the ordinary limits of such cities, and in addition thereto land lying within a distance of three thousand (3,000) feet of the exterior limits of such airports, flying fields, and landing fields; providing for intervening land to be included; authorizing such cities to pass ordinances, criminal and otherwise, under the general police powers to promote and protect the safe and efficient operation of said airports, flying fields, and landing fields and particularly the power to limit the height of any building or structure within three thousand (3,000) feet of exterior limits thereof; authorizing the policing of such territory; prohibiting taxing of property in said territory; providing the Act shall not prevent extension of city limits for municipal purposes when same may be legally done; prohibiting cities from including territory for purposes named when such territory is already within the limits of another city or town; declaring this Act to be severable; and declaring an emergency. Acts 1939, 46th Leg., p. 95.

## CHAPTER TWENTY-ONE—HOUSING [NEW]

Art.  
1269k. Housing Authorities Law; short  
title  
1269k—1. Housing Bonds Legal Invest-  
ments and Security.

Art.  
1269l. Housing Cooperation Law; short  
title.

Art. 1269k. Housing Authorities Law; short title

Section 1. This Act may be referred to as the "Housing Authorities Law."

### Finding and declaration of necessity

Sec. 2. It is hereby declared: (a) that there exist in the State insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the State there is a shortage of safe or sanitary

dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the State and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; (b) that these slum areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (c) that the clearance, replanning, and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of State concern; that it is in the public interest that work on such projects be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted; is hereby declared as a matter of legislative determination.

#### Definitions

Sec. 3. The following terms, wherever used or referred to in this Act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Authority" or "Housing Authority" shall mean any of the public corporations created by Section 4 of this Act.

(b) "City" shall mean any city.

"The City" shall mean the particular city for which a particular housing authority is created.

(c) "Governing Body" shall mean the Council or Commission of the city.

(d) "Mayor" shall mean the Mayor of the city or the officer thereof charged with the duties customarily imposed on the Mayor or executive head of the city.

(e) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(f) "Area of operation" shall include the city and the area within five (5) miles of the territorial boundaries thereof; provided, however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined.

(g) "Federal Government" shall include the United States of America, the United States Housing Authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(h) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or any combination of these factors, are detrimental to safety, health, and morals.

(i) "Housing Project" shall mean any work or undertaking: (1) to demolish, clear, or remove buildings from any slum area; such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; or (2) to

provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; or (3) to accomplish a combination of the foregoing. The term 'housing project' also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements and all other work in connection therewith.

(j) "Persons of low income" shall mean families or persons who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding.

(k) "Bonds" shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by the authority pursuant to this Act.

(l) "Real Property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

(m) "Obligee of the authority" or "obligee" shall include any bondholder, trustee, or trustees for any bondholder, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the authority.

#### **Creation of Housing Authorities**

Sec. 4. In each city (as herein defined) of the State there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city. The governing body may upon its own motion, or shall upon the filing of a petition signed by one hundred (100) qualified voters and residents of the city, make a determination as to whether or not there is need for an authority to function in the city.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the city, if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such city or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space, and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action, or proceeding.

**Appointment, qualifications, and tenure of commissioners**

Sec. 5. When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the Mayor of such adoption. Upon receiving such notice, the Mayor shall appoint five (5) persons as commissioners of the authority created for said city. Two (2) of the commissioners who are first so appointed shall be designated to serve for terms of one year and the remaining commissioners shall be designated to serve for terms of two (2) years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of two (2) years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expense, including traveling expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three (3) commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The Mayor shall designate which of the commissioners appointed shall be the first chairman, but when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners. An authority shall select from among its own commissioners a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

**Interested commissioners or employees**

Sec. 6. No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or

controls an interest direct or indirect in any property included or planned to be included in any housing project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

#### Removal of commissioners

Sec. 7. For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the Mayor, but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten (10) days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

#### Powers of authority

Sec. 8. An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with this Act, to carry into effect the powers and purposes of the authority.

(b) Within its area of operation: to prepare, carry out, acquire, lease, and operate housing projects; to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this Act or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with the requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the Federal Government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and (subject to the limitations contained in this Act) to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the Federal Government of the payment of any debts or parts thereof (whether or not incurred by said authority) secured by mortgages on any property included in any of its housing projects.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securi-

ties in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled.

(f) Within its area of operation: to investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income; to make studies and recommodations relating to the problem of clearing, replanning, and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the State or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies, and experimentation on the subject of housing.

(g) Acting through one or more commissioners or other person or persons designated by the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the State or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, or safety or welfare.

(h) To exercise all or any part or combination of powers herein granted. No provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the Legislature shall specifically so state.

#### **Operation not for profit**

Sec. 9. It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income, and receipts of the authority from whatever sources derived) will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (c) to create (during not less than the six (6) years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve.

**Rentals and tenant selection**

Sec. 10. In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons.

(b) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(c) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an aggregate annual income in excess or five (5) times the annual rental of the quarters to be furnished such person or persons except that in the case of families with three (3) or more minor dependents such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to the occupants, of heat, water, electricity, gas, cooking range, and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this or the preceding section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof or acquire title thereto through foreclosure proceedings, free from all the restrictions imposed by this or the preceding section.

**Cooperation between authorities**

Sec. 11. Any two (2) or more authorities may join or co-operate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the area of operation of any one or more of said authorities.

**Eminent domain**

Sec. 12. An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this Act after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Articles 3264 to 3271, both inclusive, Revised Civil Statutes of Texas, 1925, and Acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the State or any political subdivision thereof may be acquired without its consent.

**Planning, zoning, and building laws**

Sec. 13. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an au-



thority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

**Bonds**

Sec. 14. An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable; (a) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds, or with such proceeds together with a grant from the Federal Government in aid of such project; (b) exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds; or (c) from its revenues generally. Any of such bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, projects, or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the State or any political subdivision thereof and neither the city nor the county, nor the State or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

**Bonds or legal investments**

Sec. 14-A. Repealed. Acts 1939, 46th Leg., p. 427, § 2.  
 Effective June 7, 1939.

**Form and sale of bonds**

Sec. 15. Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six (6) per centum per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds may be sold at not less than par at public sale held after notice published once at least five (5) days prior to such sale in a newspaper having a general circulation in the city or the county and in a financial newspaper published in the City of New York, New York, provided, however, that such bonds may be sold at not less than par to the Federal Government at private sale without any public advertisement.

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures

shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable.

In any suit, action, or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located, and constructed in accordance with the purposes and provisions of this Act.

**Provisions of bonds, trust indentures, and mortgages**

Sec. 16. In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees, and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon, and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(e) To covenant (subject to the limitations contained in this Act) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe procedure, if any, by which the terms of any contract with bond holders may be amended or abrogated, the amount of bonds of holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or

may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest in a trustee or trustees or the holder of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate, and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

#### **Certificate of Attorney General**

Sec. 17. Any authority may submit to the Attorney General of the State any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the Attorney General, it shall be the duty of the Attorney General to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this Act and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations of such authority enforceable according to the terms thereof, the Attorney General shall certify in substance upon the back of each of said bonds that it is issued in accordance with the Constitution and laws of the State of Texas.

#### **Remedies of an obligee of authority**

Sec. 18. An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action, or proceeding at law or in equity to compel said authority and the commissioners, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this Act.

(b) By suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said authority.

#### **Additional remedies conferrable by authority**

Sec. 19. An authority shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred) up-

on the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding in any Court of competent jurisdiction:

(a) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(b) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the Court shall direct.

(c) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

#### **Exemption of property from execution sale**

Sec. 20. All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property; provided, however, that the provisions of this Section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

#### **Aid from Federal Government**

Sec. 21. In addition to the powers conferred upon an authority by other provisions of this Act, an authority is empowered to borrow money or accept grants or other financial assistance from the Federal Government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the Federal Government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this Act to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance, or operation of any housing project by such authority.

#### **Tax exemption and payments in lieu of taxes**

Sec. 22. The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the State or any political subdivision thereof; provided, however, that in lieu of such taxes or special assessments, an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services, and facilities furnished by such city, county, or political subdivision for the benefit of a housing project, but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished.

#### **Reports**

Sec. 23. At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other

action as it deems necessary in order to carry out the purposes of this Act.

**Severability**

Sec. 24. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances, other than those as to which it is held invalid, shall not be affected hereby.

**Act controlling**

Sec. 25. In so far as the provisions of this Act are inconsistent with the provisions of any other law, the provisions of this Act shall be controlling. [Acts 1937, 45th Leg., p. 1144, ch. 462, amended Acts 1937, 45th Leg., 2nd C.S., p. 1924, ch. 41, § 1.]

Effective Nov. 3, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

State Housing Law, see art. 1528a, post.

Housing corporations, see arts. 1524b-1524k, post.

Bill Number 102, Second Called Session of the Forty-fifth Legislature, and any amendments thereto), together with all proceedings, acts, and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

**Title of Act:**

An Act to declare the necessity of creating public bodies corporate and politic to be known as housing authorities to undertake slum clearance and projects to provide dwelling accommodations for persons of low income; to provide a short title for the Act; to define certain terms; to create such housing authorities in cities having a population of more than two hundred and thirty thousand (230,000) and less than two hundred and fifty thousand (250,000) and in such cities only; to define the powers and duties of housing authorities and to provide for the exercise of such powers, including acquiring property, borrowing money, issuing bonds and other obligations, and giving security therefor; to provide that housing authorities, their property and securities shall be exempt from taxation and assessment, but to authorize certain payments in lieu of taxes; to provide for a certification of the bonds by the Attorney General; and to confer remedies on obligees of housing authorities; to provide for reports; to provide for a saving clause; to provide this Act to control in case of conflict with any other Act; and to declare an emergency. [Acts 1937, 45th Leg., p. 1144, ch. 462.]

**Validating Act:**

Acts 1939, 46th Leg., p. 685, effective 90 days after June 21, 1939, date of adjournment, reads as follows:

"Section 1. Establishment and Organization. The establishment and organization of housing authorities pursuant to the provisions of the House Authorities Law (Chapter 462, Regular Session of the Forty-fifth Legislature, as amended by House

"Sec. 2. Contracts and Undertakings. All contracts, agreements, obligations, and undertakings of housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance, or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions, contracts, and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including agreements which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to cooperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts, and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

"Sec. 3. Notes and Bonds. All proceedings, acts, and things heretofore undertaken, performed or done in or for the authorization, issuance, sale, execution, and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all

notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved, and declared le-

gal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority."

### Art. 1269k—1. Housing Bonds Legal Investments and Security

Section 1. Notwithstanding any restrictions on investments contained in any laws of this State, the State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Housing Authorities Law (Chapter 462, Regular Session of the Forty-fifth Legislature, as amended by House Bill No. 102, Second Called Session of the Forty-fifth Legislature, and amendments thereto) <sup>1</sup> or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States Government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits; it being the purpose of this Act to authorize all persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations; provided, however, that nothing contained in this Act shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

<sup>1</sup> Article 1269k.

#### Severability

Sec. 3. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of this Act, or the application thereof to any person or circumstances, are held invalid, the remainder of the Act and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

#### Act controlling

Sec. 4. In so far as the provisions of this Act are inconsistent with the provisions of any other law, the provisions of this Act shall be controlling. Acts 1939, 46th Leg., p. 427.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 or this Act repeals art. 1269k, § 14-A; section 5 declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act to provide that bonds and other obligations issued by any public housing authority or agency in the United States, when secured by a pledge of annual contributions to be paid by the United States Government, shall be security for all public deposits, and legal investments for the State and public officers, municipal corporations, political subdivisions and public

bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries; to repeal Section 14-A of Chapter 462, Regular Session of the Forty-fifth Legislature, as amended by House Bill No. 102, Second Called Session of the Forty-fifth Legislature; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., p. 427.

## Art. 1269f. Housing Co-operation Law; short title

Section 1. This Act may be referred to as the "Housing Cooperation Law."

**Finding and declaration of necessity**

Sec. 2. It has been found and declared in the Housing Authorities Law that there exist in the State unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is hereby found and declared that the assistance herein provided for the remedying of the conditions set forth in the Housing Authorities Law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent and other aid given; that it is a proper public purpose for any State Public Body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the State Public Body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest.

**Definitions**

Sec. 3. The following terms, whenever used or referred to in this Act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Housing authority" shall mean any housing authority created pursuant to the Housing Authorities Law of this State.

(b) "Housing project" shall mean any work or undertaking of a housing authority pursuant to the Housing Authorities Law or any similar work or undertaking of the Federal Government.

(c) "State Public Body" shall mean any city, town, county, municipal corporation, commission, district, authority, other subdivision or public body of the State.

(d) "Governing Body" shall mean the council, Commissioners Court, board, or other body having charge of the fiscal affairs of the State Public Body.

(e) "Federal Government" shall mean the United States of America, the United States Housing Authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

**Co-operation in undertaking housing projects**

Sec. 4. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any State Public Body may upon such terms, as it may determine:

(a) Dedicate, sell, convey or lease any of its property to a housing authority or the Federal Government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or re-zone any part of such State Public Body; make exceptions from building regulations or ordinances; any city or town also may change its map;

(e) Enter into agreements, (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority or the Federal Government respecting action to be taken by such State Public Body pursuant to any of the powers granted by this Act; and

(f) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects.

(g) Purchase or legally invest in any of the bonds of a housing authority and exercise all of the rights of any holder of such bonds.

(h) With respect to any housing project which a housing authority has acquired or taken over from the Federal Government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation, and other protection, no State Public Body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction.

(i) In connection with any public improvements made by a State Public Body in exercising the powers herein granted, such State Public Body may incur the entire expense thereof. Any law or Statute to the contrary notwithstanding, any sale, conveyance, lease, or agreement provided for in this Section may be made by a State Public Body without appraisal, public notice, advertisement, or public bidding.

#### **Further cooperation in undertaking housing projects**

Sec. 4-a. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any State Public Body may upon such terms as it may determine: (a) enter into agreements with respect to the exercise by such State Public Body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings; and (b) cause services to be furnished to the housing authority of the character which it is otherwise empowered to furnish.

#### **Contracts for payments for services**

Sec. 5. In connection with any housing project located wholly or partly within the area in which it is authorized to act, any State Public Body may contract with a housing authority or the Federal Government with respect to the sum or sums (if any) which the housing authority or the Federal Government may agree to pay during any year or period of years, to the State Public Body for the improvements, services and facilities to be furnished by it for the benefit of said housing project, but in no event shall the amount of such payments exceed the estimated cost to the State Public Body of the improvements, services or facilities to be so furnished; provided, however, that the absence of a contract for such payments shall in no way relieve any State Public Body from the duty to furnish, for the benefit of said housing project, customary improvements and such services and facilities as such State Public Body usually furnished without a service fee.

#### **Loans to housing authority**

Sec. 6. When any housing authority which is created for any city, becomes authorized to transact business and exercise its powers



therein, the governing body of the city shall immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of such housing authority during the first year thereafter, and shall appropriate such amount to the authority out of any moneys in such city treasury not appropriated to some other purposes. The moneys so appropriated shall be paid to the authority as a loan. Any city located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it.

#### Procedure for exercising powers

Sec. 7. The exercise by a State Public Body of the powers herein granted may be authorized by resolution of the governing body of such State Public Body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolutions may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

#### Supplemental nature of act

Sec. 8. The powers conferred by this Act shall be in addition and supplemental to the powers conferred by any other law.

#### Severability

Sec. 9. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. [Acts 1937, 45th Leg., p. 1141, ch. 461, amended Acts 1937, 45th Leg., 2nd C.S., p. 1940, ch. 42, § 1.]

Effective June 8 and Nov. 3, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

#### Title of Act:

An Act to authorize cities of two hundred and thirty thousand (230,000) to two hundred and fifty thousand (250,000) population, according to the last preceding Federal Census, to aid housing projects of housing authorities or of the United States of America by furnishing parks, playgrounds, streets, and other improvements and facilities, by exercising cer-

tain other powers and by making agreements relating to such aid; to provide a Short Title; to define certain terms; to authorize cities to contract with respect to the sums to be paid them for improvements, services, and facilities to be provided for the benefit of housing projects; to require certain cities to make an appropriation for the first year's administrative expenses of housing authorities; and to authorize certain cities to lend moneys to housing authorities; and to declare an emergency. [Acts 1937, 45th Leg., p. 1141, ch. 461.]

## TITLE 30—COMMISSION MERCHANTS

### 2. LIVE STOCK COMMISSION MERCHANTS

Art.

1287a. Live stock auction commission merchants [New].

### 3. AGRICULTURAL COMMODITIES, COMMISSION MERCHANTS, DEALERS AND BROKERS [New]

Art.

1287—1. General provisions; definitions.

1287—2. Persons handling both citrus fruits and vegetables; one bond and one license fee.

## 2. LIVE STOCK COMMISSION MERCHANTS

### Art. 1287a. Live stock auction commission merchants

Section 1. Any person, firm, or corporation pursuing, or who shall pursue the business of selling livestock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks, and jennies, or any of them, at auction, upon consignment for a commission or other charges, or who shall solicit consignments of livestock as a commission merchant or agent, or who shall advertise or hold himself out to be such shall be deemed and held to be a livestock auction commission merchant within the meaning of this subdivision and subject to all the provisions and penalties herein prescribed.

Provided, however, that in all counties in this State containing a population of not less than one hundred and ninety thousand (190,000) nor more than two hundred thousand (200,000), according to the last preceding Federal Census, the limitations and conditions imposed by this Act shall not apply to any person, firm, corporation, or association of persons pursuing the business of selling mules, horses, jack, and jennies. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1963, ch. 53, § 1.]

Effective Nov. 3, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

#### Bond required

Sec. 2. All such livestock auction commission merchants, before they shall engage in said business within the State, are hereby required to make bond in an amount specified hereinafter, signed by a solvent surety company authorized to do business in this State, and having a paid up capital of not less than Five Hundred Thousand Dollars (\$500,000), which said bond shall be payable to the County Judge of the county in which such commission auction merchant has his principal office or place of business, and to his successor in office, as trustee for all persons who may become entitled to the benefit of this Law, such bond to be filed by said County Judge in the office of the County Clerk of the county in which such commission auction merchant has his principal office or place of business, and in which suit shall be instituted for any illegal breaches of said bond.

#### Conditions of bond

Sec. 3. Said bond shall be conditioned that such livestock commission auction merchant shall faithfully obey and carry out all the terms and provisions of this Law, and will faithfully and truly perform all agreements entered into with all the consignors, owners, or those holding valid lien on said livestock with respect to receiving, handling, selling, and making remittances and payments of the net proceeds thereof to said

named parties, or to the person, firm, or corporation to whom said consignor, owner, or valid lien holder shall direct such payments to be made; and said bond shall further provide and shall be conditioned that said auction commission merchant shall, within forty-eight (48) hours of a sale of the livestock so consigned, including the day of sale, Sundays, and holidays, remit the net proceeds thereof to the parties rightfully entitled to receive the same, or to such person, firm, or corporation to whom such parties shall direct the payment to be made, or shall, within forty-eight (48) hours of a sale of such livestock for said parties at interest, deposit to the credit of such parties their respective interests in the net proceeds thereof in some State or National Bank in the city, town, or county where such livestock commission merchant has his principal office or place of business, if requested by any or all of said parties at interest to do so. The amount of such bond shall be in the sum of One Thousand Dollars (\$1,000). Said bond shall further provide that the person, firm, or corporation executing the same shall keep a true and accurate record of the description of all such livestock so sold at auction, which record shall be subject to be inspected by any citizen of Texas, which shall give a description of such livestock by color, probable age, and the marks and brands, if any there be, and the location of said marks and brands. Said livestock commission merchant executing such bond shall make quarterly report of such livestock so sold, giving the name of the consignor or person purporting to own the same, together with his address and the name and address of the person or persons purchasing the same. All such surety bonds shall contain a provision requiring that at least ten (10) days prior notice in writing be given to the County Judge of the county in which such commission auction merchant has his principal office or place of business by the party terminating such bond, in order to effect its termination.

#### **Approval of bond by county judge**

Sec. 4. The County Judge shall carefully scrutinize such bond when tendered and, if satisfied therewith, shall approve said bond. No bond shall be approved by him which is not in the amount prescribed by this Law and conditioned as required by this Act and executed by such surety company.

#### **Bond filed in office of county clerk**

Sec. 5. Said bond shall be, as soon as practicable, after the approval of same by the County Judge, filed for record in the office of the County Clerk in the county where the principal business of said commission auction merchant is to be carried on, and shall be recorded at length and properly indexed in a well bound book kept for that purpose, to be labeled "Bonds of Livestock Auction Commission Merchants." It is also made the duty of such auction commission merchant to procure a certified copy of such bond from the said County Clerk at the earliest practicable date, after the filing and recording thereof.

#### **Deposit of proceeds of sale in case of dispute between claimants**

Sec. 6. If the proceeds of any livestock so sold at auction by said livestock auction commission merchant shall become involved in a dispute between contending claimants, or if said livestock auction commission merchant is notified that some other party or parties are asserting right to said proceeds, or any part thereof, in opposition to the claim of those consigning said stock to said commission auction merchant, said livestock auction commission merchant shall deposit the amount of such net proceeds involved in such contention in some State or National Bank

in the town, city, or county where said livestock commission merchant has his principal place of business and promptly notify all interested parties of his said action in the premises, whereupon no further liability as to such funds so deposited shall accrue or continue as to said livestock auction commission merchant or on his bond.

#### Suits on bond

Sec. 7. The bond provided for by this Law may be sued upon and recovery had thereon by any person claiming to have been damaged by a breach of its condition. Said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. Upon a reduction of said bond by recovery thereon, to the extent of one-half thereof, said livestock auction commission merchant shall be required forthwith to make and file a new bond, conditioned as in the third Article of this Subdivision, so as to restore said bond to the required amount. If it shall come to the knowledge of the County Judge that the surety company making such bond has become insolvent, or is not financially able to make said bond ample and sufficient in the opinion of said County Judge, then said officer shall notify said livestock auction commission merchant to execute a new bond as therein provided for; whereupon it shall be the duty of such livestock auction commission merchant to make a new bond the same as originally required by the provisions of this Law.

#### Persons included as commission merchants

Sec. 8. Any person, firm, or corporation who pursues the business of selling livestock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks, and jennies, or any of them, upon consignment at auction for a commission or other charges, or who solicits consignments of livestock as an auction commission merchant or agent, or who advertises and holds himself out to be such, shall be held to be a livestock auction commission merchant within the meaning of this Chapter. [Acts 1937, 45th Leg., p. 387, ch. 192.]

Effective April 23, 1937.

Sections 9-12 of this Act being penal provisions are published as Penal Code article 1125a, section 13 declared an emergency making the act effective on and after its passage.

#### Title of Act:

An Act defining "livestock auction commission merchants," prescribing their duties as such livestock auction commission merchants, requiring them to give bond in a solvent surety company authorized to do business in this State, with a capi-

tal stock of not less than Five Hundred Thousand Dollars (\$500,000), such bond to be approved by the County Judge of such county; to require such livestock auction commission merchants to keep an accurate description of the livestock so sold by them at auction, giving marks and brands thereof, if any; to make quarterly reports to the Commissioners Court of the county in which they carry on such business, and providing penalties therefor, and declaring an emergency. [Acts 1937, 45th Leg., p. 387, ch. 192.]

### 3. AGRICULTURAL COMMODITIES, COMMISSION MERCHANTS, DEALERS, AND BROKERS

#### Art. 1287—1. General provisions; definitions

Section 1. 1. This Act shall be known and may be cited as the Agricultural Protective Act.

2. As used in this Act, unless otherwise apparent from the context:

(a) The present tense includes the past and future tenses; and the future, the present.

(b) The masculine gender includes the feminine and neuter.

(c) The singular number includes the plural; and the plural, the singular.

(d) "Department" means the Department of Agriculture of the State of Texas.

(e) "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(f) "Section" means the Section of this Act unless some other Act is specifically mentioned.

(g) "County" includes city and county.

(h) "Person" includes individual, partnership, firm, corporation, company, or association.

(i) "Sell" includes "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade."

3. Any person in whom the enforcement of any provision of this Act is invested has the power of a peace officer as to such enforcement.

4. The District or County Attorney of any county in which a violation of any provision of this Act occurs shall, upon request of any enforcing officer or other interested person, prosecute such violation.

5. Unless a different penalty is expressly provided, a violation of any provision of this Act is a misdemeanor.

6. Whenever any notice, report, statement, or record is required by this Act, it shall be in writing unless it is expressly provided that it may be oral.

7. Whenever any notice, report, statement, or record is required by this Act to be kept or made in writing, it shall be in the English language.

8. Whenever any power or authority is given by any provision of this Act to any person, it may be exercised by any deputy, inspector, or agent duly authorized by him unless it is expressly provided that it shall be exercised in person.

9. As used in this Act the word "shall" is mandatory and the word "may" is permissive.

10. The Commissioner may enter upon any premises to inspect the same or any plant, appliance or thing therein.

11. The Commissioner is hereby authorized to promulgate and adopt rules and regulations for carrying out those provisions of this Act which he is directed and authorized to administer or enforce.

#### Produce dealers

Sec. 2. (a) As used in this Act the term "person" includes any individual, firm, partnership, corporation or association of persons.

(b) The term "producer" means any person engaged in the business of growing or producing any farm product.

(c) The word "vegetables" and/or the words "agricultural commodities" and/or the words "farm products," when used in this Act shall mean any and/or all of the following enumerated commodities: Asparagus, Beans (string, wax, or green), Beets (bunched or topped), Broccoli (Italian sprouting), Cabbage (for sauerkraut), Cantaloupes, Carrots (bunched or clipped), Cauliflower, Celery (rough), Corn (green), Cucumbers (slicing), Dewberries and Blackberries, Eggplant, Endive or Escarole or Chicory, Garlic, Kale, Lettuce, Melons (Honey Ball and Honey Dew), Mustard Greens, Okra, Onions, Parsley, Peaches, Pears, Peas (fresh), Peppers (sweet), Potatoes, Potatoes (sweet), Radishes, Romaine, Shallots, Spinach, Strawberries, Tomatoes (fresh), Turnips (bunched or topped), or Rutabagas, Turnip Greens, and Watermelons.

(d) The term "consignor" includes any person who delivers to any commission merchant, dealer, or broker or the agent of any commission

merchant, dealer, or broker any farm products for handling, sale, or resale.

(e) The term "commission merchant" means any person who shall receive on consignment or solicit from the producers thereof any farm product within the terms of this Act for sale on commission on behalf of this producer, or who shall accept any farm product in trust from the producer thereof for the purpose of resale, or who shall sell or offer for sale on commission any farm product, or who shall in any way handle for the account of, or as an agent of, the producer thereof any farm product.

(f) The term "dealer" means any person other than a commission merchant who for the purpose of resale at wholesale obtains from the producer thereof possession or control of any farm product, except by payment to the producer, at the time of obtaining such possession or control, of the full agreed price of such commodity.

(g) The term "broker" means any person engaged in the business of soliciting or negotiating the sale of any farm product.

(h) The term "agent" means any person who on behalf of any commission merchant, or dealer, or broker receives, contracts for, or solicits any farm product from a producer thereof or who negotiates the consignment or purchase of any farm product on behalf of any commission merchant, dealer, or broker.

(i) The term "commissioner" means the Commissioner of Agriculture of the State of Texas.

#### Exclusions

Sec. 3. This Act does not apply to or include:

(a) Any cooperative organization, operating under and by virtue of the laws of this State, or of any other State, or the District of Columbia, or the United States, or the agents of such organizations in the performance of their duties as such, except as to that portion of the activities of such organization, or agent as involves the handling or dealing in the farm products of non-members of such organization.

(b) Any person or exchange buying farm products for the purpose of reselling the same in dried, canned, or other preserved form.

(c) Any person who is engaged in the business of selling farm products as a retailer. It is expressly provided that any individual, partnership, corporation, company, or association of persons which is engaged in the business as a buying agency for more than three retail outlets is not a retailer within the purview of this Act. A retailer within the meaning of this Act is any person who purchases farm products in small quantities for resale to the consumer.

#### Licensing

Sec. 4. No person shall act as a commission merchant, dealer, broker, or agent without having obtained a license as provided in this Act. Every person acting as a commission merchant, dealer, broker, or agent as herein defined, shall file an application with the commissioner for a license to transact the business of commission merchant, dealer, broker, and/or agent and such application shall be accompanied by the license fee herein provided for each specified class of business. Separate applications shall be filed for each class of business.

Such application shall in each case state the full name of the person applying for such license, and if the applicant be a firm, partnership, corporation, or association of persons, the full name of each member of such firm, or the names of the officers of such corporation or association or company shall be given in the application. Such application

shall further state the principal business address of the applicant in the State of Texas and elsewhere and the name or names of the person or persons authorized to receive and accept service of citation and legal notice of all kinds for the applicant. Such applicant shall further satisfy the Commissioner of his or its character, responsibility, and good faith in seeking to carry on the business stated in the application in the manner and form to be provided by the Commissioner.

In addition to the general requirements applicable to all classes of applications as in this Section set forth, the following requirements shall apply to the class of application noted:

(1) Commission Merchants: Each application shall include a schedule of commissions and charges for services, and such designated commissions and charges shall not be changed nor verified for the license period, except by written contract between the parties.

(2) Agents. Each application shall include such information as the Commissioner may consider proper or necessary, and shall include the name and address of applicant and the name and address of each commission merchant, dealer, or broker represented or sought to be represented by said agent, and the written endorsement or nomination of such commission merchant, dealer, or broker. The Commissioner shall thereupon issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application for a year from the date thereof, or until the same shall have been revoked for cause. The Commissioner may also issue to each agent a card, or cards, which shall bear the signature of such agent and his principals, separate cards being required for each principal. Any agent shall show said card or cards upon the request of any interested person. Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted thereunder. All indicia of the possession of a license shall be at all times the property of the State of Texas and each licensee shall be entitled to the possession thereof only for the duration of said license.

For filing the applications herein described, each applicant must pay a fee as follows:

- (a) Commission merchants: Twenty-five Dollars (\$25) each year.
- (b) Dealers: Twenty-five Dollars (\$25) each year.
- (c) Brokers: Twenty-five Dollars (\$25) for each year.
- (d) Agents: One Dollars (\$1) for each year.

Any person who shall have been licensed as a commission merchant, shall, upon application, be licensed also as a dealer and/or as a broker as defined herein without payment of further fees, and shall thereupon conform to the parts of this Act regulating the business of a dealer and/or broker. Any person who has applied for and receives a license as a dealer or broker in the manner and upon payment of the fee herein set forth may apply for and secure a license as a commission merchant in addition to the license issued to him as such dealer or broker, without payment of further fee and upon further complying with those parts of this Chapter regulating the licensing of a commission merchant.

The Commissioner shall publish in pamphlet form at least once each calendar year and may publish as often as he thinks necessary a list of all licensed commission merchants, dealers, brokers, and agents, together with all necessary rules and regulations concerning the enforcement of this Act. Each licensed commission merchant, dealer, broker, or agent shall post his license, or a copy thereof, in his office or place of business in plain view of the public. All license fees collected under the provisions of this Act shall be paid into the State Treasury and

shall be kept by the State Treasurer in a separate fund to be known as the Agricultural Protective Act Fund and the same shall be expended in carrying out the provisions of this Act.

#### Bonding

Sec. 5. Before any license is issued to any commission merchant, dealer, or broker, such commission merchant, dealer or broker shall execute and deliver to the Commissioner a surety bond in the sum of Five Thousand Dollars (\$5,000), executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety. Said bond shall be conditioned upon compliance with the provisions of this Act and upon the faithful and honest handling of farm products in accordance with the terms of this Act. Said bond shall be to the State in favor of every consignor or producer of farm products. Any consignor or producer of farm products claiming to be injured by the fraud, deceit, or wilful negligence of any commission merchant, dealer, or broker, may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud, deceit, or wilful negligence, or the failure to comply with the provisions of this Act. Any case of failure by a commission merchant, dealer, or broker to pay consignor, or producer creditors for farm products received from said consignor, or producer, to be sold, the Commissioner shall proceed forthwith to ascertain the names and addresses of all consignor, or producer creditors of such commission merchant, dealer, or broker, together with the amounts due and owing to them and each of them by such commission merchant, dealer, or broker and shall request all such producer, or consignor creditors to file a verified statement of their respective claims with the Commissioner. Thereupon the Commissioner shall bring an action on the bond in behalf of such producer, or consignor creditors. Upon any action being commenced on said bond, the Commissioner may require the filing of a new bond and immediately upon the recovery in any action upon such bond such commission merchant, dealer, or broker shall file a new bond and upon failure to file the same within ten (10) days in either case, such failure shall constitute grounds for the suspension or revocation of his license.

#### Enforcement

Sec. 6. Enforcement. For the purpose of enforcing the provisions of this Act the Commissioner is authorized to receive verified complaints against any person assuming or attempting to act as such, and upon receipt of such verified complaint, shall have full authority to make any and all necessary investigations relative to the said complaint. He shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in which any produce is kept, stored, handled, or transported. He shall have full authority to administer oaths and to take testimony thereunder; to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles, or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said Commissioner shall be guilty of contempt and shall be certified to a court of competent jurisdiction for punishment for such contempt; copies of records, inspection certificates, certified reports, and all papers on file in the office of the Commissioner shall be prima facie evidence of the matters therein contained.

The Commissioner of his own motion may, or upon the verified complaint of any interested person shall investigate, examine, or inspect any



transaction involving solicitation, receipt, sale, or attempted sale of farm products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, or agent; failure to make proper and true account of sales and settlement thereof as in this Act required; the intentional making of false statement as to condition and quantity of any farm products received, or in storage; the intentional making of false statements as to marketing conditions; the failure to make payment for farm products within the time required by this Act; or investigate, examine, or inspect any and all other injurious transactions, and in furtherance of any such investigation, examination, or inspection, the Commissioner or any authorized representative may examine that portion of the ledgers, books, accounts, memoranda, and other documents, farm products, scales, measures, and other articles and things used in connection with the business of such person relating to the transactions involved. When a producer or consignor of farm products fails to obtain settlement satisfactory to him in any transaction after having notified the consignee, a verified complaint may be filed with the Commissioner who shall undertake to effect a settlement, and in the event that he shall fail to effect such settlement, he shall cause a copy of such complaint, together with a notice of the time and place and hearing of such complaint, to be served personally or by mail upon such person. Such service shall be made at least ten (10) days before the hearing, which shall be held in the city or town in which, or closest to which, is situated the business location of the licensee or in which the transaction complained of is said to have occurred. At the time and place appointed for such hearing, the Commissioner, or his agents, shall hear the parties to such complaint and shall enter a decision either dismissing such complaint or specifying the facts established on such hearing. A copy of such decision shall be furnished each, every, and all the respective parties thereto.

The Commissioner may refuse to grant a license and may revoke or suspend any license, as the same may require, when he is satisfied of the existence of any of the following facts:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale, or storage of, or for the rendering of any service in connection with the handling, sale, or storage of any farm products.

(2) That the applicant or licensee has failed or refused to render a true account of sale, or to make a settlement thereon, or to pay for farm products received within the time and in the manner required by this Act.

(3) That the applicant, or licensee, directly or indirectly, has purchased for his or its own account farm products received by him upon consignment without prior authority from consignor, or producer, together with price fixed by consignor, or producer, or without promptly notifying the consignor or producer of such purchase. This shall not prevent any commission merchant from checking the account of sales, in order to close the day's business, miscellaneous lots or parcels of farm products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(4) That the applicant, or licensee, has individually made any false or misleading statements as to the conditions of the market for any farm products.

(5) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the producer or consignor.

(6) That a commission merchant to whom any consignment is made has reconsigned to another commission merchant, for the purpose of receiving, collecting, or charging by such means, more than one commission for making the sale thereof for the consignor, unless by consent of such consignor.

(7) That the licensee, or applicant, has failed or refused to file with the Commissioner a schedule of his charges for services in connection with produce handled on account of or as an agent of another; that the applicant, or licensee, has indulged in any unfair practice.

Previous violation by the applicant or by any person connected with him, or it, of any of the provisions of this Chapter shall be good and sufficient ground for denial of a license.

Any action of the Commissioner with reference to the granting of, or the refusal to grant, or to renew any license, or with reference to the revocation or suspension of any license granted under the provisions of this Chapter may be reviewed by any court of competent jurisdiction, but pending final determination of any such review, in the case of the revocation or suspension of any person licensed hereunder, such license shall be deemed in full force and effect pending the expiration of the license period or the final determination of such proceeding, whichever is first in point of time.

Every commission merchant, dealer, or broker having received any farm products for sale as such commission merchant, dealer, or broker, shall promptly make and keep a correct record showing in detail the following with reference to the handling, sale, or storage of such farm products:

- (a) Name and address of the consignor.
- (b) The date received.
- (c) The condition and quantity upon arrival.
- (d) Date of such sale for account of consignor.
- (e) The price for which sold.
- (f) An itemized statement of the charges to be paid by consignor in connection with the sale.
- (g) The names and addresses of the purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as co-partner, as lender or borrower of money to or from the other, or otherwise.
- (h) A lot number or other identifying mark for each consignment shall be or shall appear on all sales tags or other essential records needed to show what the produce actually sold for.
- (i) Any claim or claims which may have been or may be filed by the commission merchant, dealer, or broker against any person for overcharges or for damages resulting from the injury or deterioration of such farm products by the act, negligence, or failure of such person and such records shall be open to the inspection of the Commissioner and the consignor of farm products in whom such claim or claims are made.

When requested by his consignor, a commission merchant, dealer, or broker shall, before the close of the next business day following the sale of any farm products consigned to him, transmit or deliver to the owner or consignor of the farm products a true written report of such sale, showing the amount sold and the selling price. Remittance in full of the amount realized from such sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sale, shall be made to the consignor

within ten (10) days after receipt of the moneys by commission merchant, dealer, or broker, unless otherwise agreed in writing. In the account, the names and addresses of purchasers need not be given as required except as required in Subdivision (g) of Section 6.

Every commission merchant, dealer, or broker shall retain a copy of all records covering each transaction, for a period of one (1) year from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the commissioner and/or the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment, or consignment of farm products, the department shall furnish upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment, or consignment. Such certificate shall be prima facie evidence in all Courts of this State as to the recitals thereof. The burden of proof shall be upon the commission merchant, dealer, or broker to prove the correctness of his accounting as to any transaction which may be questioned.

When any dealer, commission merchant, or broker causes a producer, seller, or owner, or agent of such producer, seller, or owner, to part with the control or possession of any farm products or vegetable or agricultural commodity, as defined in this Act, by means of any agreement under which such producer, seller, or owner, or agent of such producer, seller, or owner, has waived the right to demand the purchase price as and when he parts with control or possession of such agricultural commodity, the contract for the handling, purchase of, or sale of such agricultural commodity as between the dealer, commission merchant, or broker, and the producer, seller, or owner, or the agent of such producer, seller, or owner, shall be evidenced in writing in duplicate, such writing shall contain the details of such transaction, including the price to be paid by such dealer, commission merchant, or broker, and the time and manner of payment of such price. In the event the contract, or writing, does not specify a time and manner of settlement, then the dealer, commission merchant, or broker shall settle therefor within thirty (30) days from and after the delivery of such agricultural commodity, or commodities, into the control or possession of such dealer, commission merchant, or broker, by producer, seller, or owner, or agent of such producer, seller, or owner, and the dealer, commission merchant, or broker, shall then truly account to and pay over to said producer, seller, or owner, or the agent of such producer, seller, or owner, the full amount called for by such contract or writing, including any minimum price guaranteed by dealer, commission merchant, or broker.

Any sale of farm products made by a commission merchant for less than the current market price with any person with whom he has any financial connection, directly or indirectly, as owner of its corporate stock, as co-partner, or otherwise, or any sale out of which any commission merchant receives directly or indirectly any portion of the purchase price other than the commission provided for under the schedule required to be filed with the commissioner by virtue of the terms of this Act, shall be prima facie evidence of fraud within the meaning of this Act.

#### Penalties

Sec. 7. Any person is guilty of a misdemeanor and is punishable by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not more than one (1) year or by both, who assumes or

attempts to act as a commission merchant, dealer, broker, or agent without a license, or who, being a commission merchant, dealer, or broker:

(a) Imposes false charges for handling or service in connection with farm products.

(b) Fails or refuses to supply and/or deliver to a producer, seller, or owner, or the agent of such producer, seller, or owner, a memoranda or contract in writing in any transaction whereby such producer, seller, or owner, or the agent of such producer, seller, or owner, has waived the right to demand the purchase price as and when such producer, seller, or owner, or the agent of such producer, seller, or owner, parts with the control or possession of any agricultural commodity or commodities, or fails to account promptly, correctly, fully, and properly and to make settlement therefor as herein provided.

(c) Intentionally makes false or misleading statement or statements as to market conditions.

(d) Makes fictitious sales or is guilty of collusion to defraud the producer.

(e) Directly or indirectly purchases for his own account goods received by him upon consignment without prior authority from the consignor, or fails promptly to notify the consignor of such purchases, if any, on his own account. This clause does not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of farm products remaining unsold, if such commission merchant, dealer, or broker forthwith enters such transaction on his account of sales.

(f) Intentionally makes false statement or statements as to the grade, condition, markings, quality, or quantity of goods received, shipped, or packed in any manner.

(g) Fails to comply in every respect with the terms and provisions of this Act. Civil suits and criminal prosecutions arising by virtue of any of the provisions of this Chapter may be commenced and tried in either the county in which the products were received by the commission merchant or within the county in which the principal place of business of the commission merchant is located, or within the county in which the violation of this Chapter occurred.

**Act applicable only to Texas Citrus Fruit Zone**

Sec. 8. The terms of this Act shall apply only to the Texas Citrus Fruit Zone, as said area is defined in Section 1 of House Bill No. 553, Chapter 230, General Laws of Texas, Regular Session Forty-second Legislature, and shall not apply to any other section of the State.

**Anti-Trust Laws unaffected**

Sec. 8a. Provided, however, nothing in this Act shall alter, repeal, change or modify the Anti-Trust Laws of this State and in the event any Section or Subsection of this bill shall conflict with the provisions of the Anti-Trust Laws, either Civil or Criminal, said Section or Subsection shall fall and the Anti-Trust Laws, both Civil and Criminal, shall stand.

**Persons excepted from act**

Sec. 8b. The provisions of this Act shall not apply to any person, firm or corporation paying for such commodities in lawful currency of the United States at the time of purchase.

**Administration of Act; salaries and expenses; Agricultural Protective Fund**

Sec. 9. The administration of this Act and of House Bill No. 99,<sup>1</sup> Regular Session Forty-fifth Legislature shall be by and under the direction

of the Commissioner of Agriculture, who is hereby authorized to appoint a director, two assistant directors, and such inspectors and other assistants as may be necessary to the proper enforcement of this Act, and of House Bill No. 99, Acts Regular Session Forty-fifth Legislature; provided that the salary of said director shall not exceed Three Hundred (\$300.00) Dollars per month, that of the two assistant directors not to exceed Two Hundred (\$200.00) Dollars per month each, and that of inspectors not to exceed One Hundred Fifty (\$150.00) Dollars per month each, and that of stenographers not to exceed the salary fixed by the Legislature for stenographers in the various State Departments. All salaries, travelling expenses of director, assistants and inspectors, and all other expenses incident to the enforcement of this Act and of House Bill No. 99, Regular Session Forty-fifth Legislature, shall be paid out of funds received by the Commissioner in fees and otherwise from the enforcement of this Act, and from the enforcement of House Bill No. 99, Regular Session Forty-fifth Legislature, provided that all moneys received by the Commissioner, through the enforcement of these two Acts shall be deposited in the State Treasury where same shall be set up by the Comptroller and the Treasurer in a Special Fund to be known as the Agricultural Protective Act Fund, which shall be a continuing fund, and all expenditures made by the Commissioner in the administration of this Act, and of House Bill No. 99, Regular Session Forty-fifth Legislature, shall be for accounts approved by him and upon warrants drawn by the Comptroller on the State Treasurer against said Agriculture Protective Act Fund. [Acts 1937, 45th Leg., p. 926, ch. 443, as amended Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, § 1.]

1 Article 118b and Penal Code, art. 1700a—3.

Effective 90 days after May 22, 1937, date of adjournment of Regular Session of the 45th Legislature.

Section 2 of Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, repealed art. 118b, § 26. Section 3 is published as art. 1287—2. Section 4 declared an emergency and specifically provided that this Act should take effect and be in force concurrently with House Bills Nos. 99 and 557 of the Regular Session of the 45th Legislature which are effective 90 days after May 22, 1937, date of adjournment of Regular Session of 45th Legislature.

Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, amended Acts 1937, 45th Leg., p. 926, ch. 443 by striking out sections 9, 9a, 9b and 9c of the Act and substituting therefor a new section to be known as Section 9, as now set out in the text.

Sec. 10 of Acts 1937, 45th Leg., p. 926, ch. 443, provides that "1. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional."

Title of Act:

An Act providing for the licensing of all persons before engaging in the busi-

ness of handling perishable agricultural commodities as defined in this Act, whether as a commission merchant, dealer, broker, or as agent of any commission merchant, dealer, or broker; defining certain terms as used herein; providing manner of settlement by licensees with producer, seller, or owner; providing that all contracts between dealers and owners, sellers, or producers, shall be in writing and providing time and manner of settlement; making it unlawful for any person to engage in business as a commission merchant, dealer, broker, or as an agent of any commission merchant, dealer, or broker without first complying with the terms and provisions of this Act; prescribing the duties of the commissioner under this Act; providing for applications for licenses under this Act and for the contents thereof; providing for license fees to be paid by licensees under this Act and for the granting of licenses and the duration thereof; providing for the cancellation of licenses for violation of this Act; providing for the depositing of license fees with the State Treasurer in a special fund to be known as the Agricultural Protective Act Fund and providing the purpose for which such funds may be used; providing for the investigation and filing of complaints by the commissioner and/or his agents against violators of this Act; providing for the holding of hearings by the commissioner on such complaints and for the commissioner's powers and authority in connection with such hearing; providing for cancellation or

suspension of licenses and providing for appeal to Courts of competent jurisdiction for revision of any order entered by the Commissioner; providing for accurate records of accounts to be kept and furnished by licensees under this Act to consignors, producers, and/or their agents; providing for the powers and authority of the commissioner in all matters pertaining to violations of the provisions of this Act; fixing penalties for violators of this Act; providing for bonding licensees under this Act and for fixing the amount of said bond and the terms, conditions, and requirements thereof; providing for recovery on said bonds in the event of violation thereof under this Act and fixing the venue of all suits arising thereunder; providing for exemption of retailers as defined in this Act; providing for the exemption of co-operative organizations as defined herein from the terms of this Act; providing for the exemption of persons buying farm products for the purpose of reselling the same in dried, canned, or other preserved form; providing for the exemption from the provisions of this Act of all growers who handle and market their own fruit individually; providing that it shall be the duty of the commissioner, his agents, and employees to assist in the apprehension and punishment of violators of this Act; providing for the regulation of buying, selling, and handling perishable agricultural commodities to prevent unfair trade practices and in a manner which will assure the protection of producers and licensees as herein defined; providing that it shall be unlawful for any person to engage in the business of handling farm products within this State unless and until such person has fully complied with the provisions of this Act;

making the provisions of the Act pertaining to necessity for license and license fees applicable only to the Texas Citrus Zone as defined in Section 1 of House Bill No. 553, Chapter 350, Acts, Forty-second Legislature; providing that this Act shall not amend or modify, or in any way repeal the Anti-Trust Laws of this State; and providing that this Act shall not apply to truckers paying cash for such commodities; and providing that the administration of the terms and conditions of this Act shall be under the direction and supervision of the Chief or Director of the Markets and Warehouse Division of the Department of Agriculture; and providing that H.B. No. 99, as passed by the Forty-fifth Legislature shall be amended so as to place the administration and supervision of said H.B. No. 99 under the direction and supervision of the Chief or Director of the Markets and Warehouse Division of the Department of Agriculture, for the term of office and at a salary fixed by the terms of this Act; and providing that the Chief or Director of the Markets and Warehouse Division of the Department of Agriculture shall be appointed by the Commissioner of Agriculture for a term of office of six (6) years from and after the effective date of this Act, at a salary of Four Hundred Dollars (\$400) per month, and providing for the appointment of necessary assistants, inspectors and other personnel, and providing for payment of salaries, traveling and other incidental expenses; providing for the validity of remainder of this Act if any portion of the same be declared unconstitutional; and declaring an emergency. [Acts 1937, 45th Leg., p. 926, ch. 443.]

**Art. 1287—2. Persons handling both citrus fruits and vegetables; one bond and one license fee**

Any person who comes within any of the classifications set out in either House Bill No. 99,<sup>1</sup> Acts Regular Session Forty-fifth Legislature or House Bill No. 557,<sup>2</sup> Acts Regular Session Forty-fifth Legislature, wherein a surety bond of Five Thousand (\$5,000.00) Dollars is required by him by that classification, shall be permitted to give one Five Thousand (\$5,000.00) Dollars surety bond, so worded as to guarantee faithful performance of all the provisions of both House Bill No. 99, Acts Regular Session Forty-fifth Legislature and House Bill No. 557, Acts Regular Session Forty-fifth Legislature, such bond to be in such form as the Commissioner of Agriculture may prescribe, and any person who elects to give one surety bond of Five Thousand (\$5,000.00) Dollars to guarantee faithful performance under both of said Acts shall be liable for only one license fee of Twenty-five (\$25.00) Dollars, and his license shall reflect the fact that he is licensed thereby to handle both citrus fruits and vegetables. [Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, § 3.]

<sup>1</sup> Article 113b and Pen.Code, art. 1700a—3.

<sup>2</sup> Article 1287—1. Effective 90 days after May 22, 1937,

date of adjournment of Regular Session of the 45th Legislature.

Emergency section. See note under article 1287—1, § 9, ante.

## TITLE 32—CORPORATIONS—PRIVATE

## CHAPTER ONE—PURPOSES

Art.	Subject	Subdivision No.	Subject	Subdivision No.
1302.	Purposes.		Processing and scouring wool, hair, and mohair .....	104
	Subject	Subdivision No.	Art.	
	Building materials .....	99	1302b.	Dealing in and canning fruits and vegetables; cold storage plants [New].
	Grading, terracing, drainage structures, and other dirt construction work....	103	1302c.	National reunions and conventions of fraternal orders—Formation of corporations for [New].
	Hospital services .....	104		
	Livestock, registration, record of pedi- gree, and improvement of breeding....	100		
	Nonprofit Livestock associations.....	102.		
	Patents, purchase of, and manufacture and sale under .....	101		

## Art. 1302. 1121, 642, 566 Purposes

68.

See article 2317.

99. Private corporations may be created for the purpose of producing, mining, manufacturing, buying, and selling of building materials of all kinds. Acts 1937, 45th Leg., p. 140, ch. 73, § 1.

Effective March 25, 1937.

Section 2 of this Act declared an emergen-

cy and provided that the Act should take effect from and after its passage.

100. Corporations may be created for the purpose of providing for the registration, preservation of the purity of the blood, and improvement in the breeding of any species or class of livestock, and to keep, maintain, and publish in suitable form the history, record, and pedigree thereof. Acts 1937, 45th Leg., p. 654, ch. 323, § 1.

101. Corporations may be created for the purpose of purchasing and owning patents with all rights incidental thereto, and to manufacture products and processes thereunder, and to market, sell, and distribute such products, and license dealers to use such processes in prescribed territories on a royalty basis. Acts 1937, 45th Leg., p. 654, ch. 323, § 1.

102. Corporations may also be created for the purposes of providing for the mutual protection of members of voluntary Nonprofit Livestock Associations and to promote generally the welfare of the livestock industry in the State and Nation. Acts 1937, 45th Leg., p. 654, ch. 323, § 1.

Effective May 13, 1937.

Section 2 of this Act declared an em-

ergency and provided that the Act should take effect from and after its passage.

103. Corporations may be formed to establish, maintain, operate and engage in the business of grading, constructing terraces and drainage structures and all other forms of dirt construction work. [Acts 1937, 45th Leg., p. 475, ch. 239, § 1.]

Effective May 1, 1937.

Section 2 of this Act declared an em-

ergency making the act effective on and after its passage.

104. Corporations may be formed for the purpose of processing and scouring wool, hair, and mohair, for profit, and shall have the power and authority to buy and sell wool, hair, and mohair, and to own, operate, and maintain processing and scouring plants. Added Acts 1939, 46th Leg., p. 127, § 1.

Effective May 3, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after

its passage. Another subdivision 104 was added by Acts 1939, 46th Leg., p. 123, § 16, see post.

104. Corporations may be created as charitable, benevolent and non-profit corporations to furnish hospital services to its members. Added Acts 1939, 46th Leg., p. 123, § 16.

Effective May 10, 1939.

Sections 1-15 of the act cited to the text are published as art. 4590a; sections 17-19 as note to art. 4590a.

Another subd. 104 was added by Acts 1939, 46th Leg., p. 127, § 1, see ante.

#### Art. 1302b. Dealing in and canning fruits and vegetables; cold storage plants

Section 1. Corporations may be formed for the purpose of dealing in fruits, fruit juices, and vegetables produced in the United States and shall have power and authority to buy and sell fruits, fruit juices, and vegetables; to prepare the same for market; to preserve and can the same; to own and operate cold storage plants and warehouses in connection with such business; and to finance the carrying and orderly marketing of such fruits, fruit juices, and vegetables; and the transaction of all business heretofore set out.

#### Operation of airplanes for dusting and spraying orchards, vegetables and crops

Sec. 2. Corporations may be formed with the right to acquire and to own, lease, operate, or have operated airplanes, including all classes of flying machines, for the purpose of dusting and spraying orchards, vegetables, and crops of whatsoever character with insecticides, and to buy and sell such insecticides as an incident thereto, with the right to acquire by purchase or otherwise or maintain all necessary starting and lighting grounds and fields and workshops.

#### Act cumulative

Sec. 3. This Act shall be cumulative of all other laws heretofore enacted creating new purposes for which corporations may be formed and not since repealed. Acts 1937, 45th Leg., p. 783, ch. 333.

Effective May 19, 1937.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act to provide for the creation of corporations for the purpose of dealing in, buying and selling, preparing for market, and preserving and canning fruits, fruit juices, and vegetables produced in the United States and enumerating the power and authority of such corporations; providing for the creation of corporations for

the purpose of owning and operating airplanes and all other flying machines to be used in spraying orchards and crops with insecticides; providing for other rights and powers of such corporations, including the right to buy and sell insecticides and the right to acquire and maintain necessary starting and lighting grounds and fields and workshops; providing that this Act shall be cumulative of other Acts creating purposes for which corporations may be formed; and declaring an emergency. [Acts 1937, 45th Leg., p. 783, ch. 333.]

#### Art. 1302c. National reunions and conventions of fraternal orders— Formation of corporations for

Section 1. Corporations may be formed for the purpose of planning, holding, financing, and conducting the national reunion and convention of any recognized fraternal order when held within the State of Texas, and exercising control over all matters pertaining to such reunion and convention.



Sec. 2. The Secretary of State is authorized to charge for the use of the State, upon the filing of each such charter, a filing fee of not to exceed Ten (\$10.00) Dollars. Acts 1939, 46th Leg., p. 128.

Effective June 30, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that private corporations may be formed for the purpose of planning, holding, financing, and conducting the national reunion and convention of

any recognized fraternal order when held within the State of Texas, and exercising control over all matters pertaining to such reunion and convention; limiting the amount of filing fee that may be charged such corporations by the Secretary of State; and declaring an emergency. Acts 1939, 46th Leg., p. 128.

## CHAPTER TWO—CREATION OF CORPORATIONS

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| <p>Art.<br/>1315(a). Extension of charters of private corporations by Secretary of State [New].</p> <p>1315(b). Corporations included; ten year period defined [New].</p> | <p>Art.<br/>1316a. Consolidation of corporations having capital stock of not more than \$200,000 [New].</p> |
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### Art. 1315(a). Extension of charters of private corporations by Secretary of State

Subject to a finding by the Secretary of State as hereinafter provided, any private corporation organized or incorporated for any purpose or purposes authorized under this Title, at any time within ten (10) years prior to the expiration of its charter, or any extension thereof, may extend such charter and the corporate existence of such corporation for an additional period of not to exceed fifty (50) years from the expiration date of the original charter, or any extension thereof, with all the privileges, powers, immunities, right of succession by its corporate name, and rights of property, real and personal, exercised and held by it at such expiration date, to the same intents and purposes as upon original incorporation. The manner of extending any such charter shall be by a resolution in writing, adopted at any annual or special meeting of stockholders called for that purpose by stockholders holding a majority of the shares of capital stock of such corporation then outstanding, such resolution to specify the period of time for which the charter is extended, and a copy of such resolution, duly certified by the secretary of the corporation, under the corporate seal, shall be filed and recorded in the office of the Secretary of State. Upon the adoption of such resolution and the filing of a certified copy thereof with the Secretary of State, together with payment of the filing fee herein prescribed, the charter and corporate existence of such corporation may be extended for the additional period of time recited in such resolution. The filing fee to be paid for any such extension of a charter shall be such fee as said corporation would be required under the Statutes of Texas to pay in the event it was then applying for a new charter instead of extending its then existing charter.

Such extensions, however, may be made only in instances where the Secretary of State shall have found, after proper investigation, that such corporation is solvent and its capital unimpaired. [Acts 1937, 45th Leg., p. 368, ch. 179, § 1.]

Effective April 19, 1937.

Section 2 of this Act declared an emer-

gency making the act effective on and after its passage.

**Art. 1315(b). Corporations included; ten year period defined**

The provisions of Article 1315(a) shall extend to and include all private corporations incorporated under the general laws of Texas. The period of ten (10) years prior to the expiration of the charter or any extension thereof referred to in Article 1315(a) shall include the period of time during which such corporation may have continued its existence under the provisions of Article 1389 of the Revised Civil Statutes of 1925. [Acts 1937, 45th Leg., 1st C.S., p. 1773, ch. 14, § 1.]

Effective July 7, 1937.

Section 2 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

**Art. 1316a. Consolidation of corporations having capital stock of not more than \$200,000**

Section 1. Two (2) and not more corporations, neither of which has more than Two Hundred Thousand Dollars (\$200,000) of outstanding capital stock, organized under the laws of the State of Texas for one or more of the purposes specified in Subdivision 81 of Article 1302 of the Revised Civil Statutes of Texas of 1925, or any amendment thereof, may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the amount and character of its capital stock, the number of its directors (not less than three), the names and residences of those who are appointees until the first annual meeting thereafter, and the time and place of the first annual meeting and election. If such agreement is approved by the vote of persons holding a majority of shares of stock of each corporation, present in person or by proxy, at a regular meeting of each said corporation or at a special meeting called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under and by virtue of Subdivision 81 of Article 1302 of the Revised Civil Statutes of Texas of 1925.

Sec. 2. The articles of consolidation shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized for the purposes specified under Subdivision 81 of Article 1302. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and shall have issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all the powers of a corporation as if originally organized thereunder. No consolidation hereunder shall be approved or given effect if it tends to create in any manner a trust or monopoly, and nothing herein shall affect, modify, or repeal any provision or effect of Title 126, Revised Civil Statutes of Texas of 1925, relating to trusts and/or monopolies.

Sec. 3. In the event said consolidation of such corporations shall not increase the taxable capital over the combined amount of the taxable capital as set out in Article 7084, as amended, of the corporations so consolidated and upon which a franchise tax has been duly paid by said corporations to the Secretary of State for the current year, then in such event no further franchise tax shall be payable until the next regular payment date, as provided in Title 122, Chapter 3, of the Revised Civil Statutes of Texas of 1925, but in the event that said consolidation of such corporations as provided in Sections 1 and 2 of this Act shall provide for an increase in the taxable capital of the proposed corporation over the combined taxable capital of the corporation so consolidated up-

on which franchise tax had been already duly paid for the current year by such corporations, then in such event, upon the approval of said consolidation by the Secretary of State, a supplemental franchise tax shall be paid by said corporation as required in Article 7090 of the Revised Civil Statutes of Texas of 1925, in the case of an increase in the taxable capital of any domestic or foreign corporation. Acts 1939, 46th Leg., p. 129.

Effective May 15, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for the consolidation of corporations organized under Subdivision 81 of Article 1302 of the Revised Civil Statutes of Texas of 1925, or any amendment thereof; and providing for the agreement of consolidation and the manner of

its approval; and for filing and recording of the articles of consolidation; and providing that nothing hereunder may modify or repeal the laws of this State relating to monopolies or trusts; and providing for the payment of supplemental franchise tax in the event said consolidation shall increase the capital stock over that of the consolidated corporations; and declaring an emergency. Acts 1939, 46th Leg., p. 129.

### CHAPTER THREE—GENERAL PROVISIONS

#### Art. 1322. [1173] [676] [600] Conveyances

Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or vice-president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact where the instrument constituting such attorney in fact is executed in said manner first mentioned. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. As amended Acts 1939, 46th Leg., p. 133, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory act of 1939

declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 1323. [1153] [655] [579] Directors: quorum

A majority of the directors or trustees shall constitute a quorum and be competent to fill vacancies in the board and to transact all business of the corporation. An annual election shall be held for directors or trustees at such time and place as the by-laws of the corporation may require. Provided that any corporation, formed under Subdivisions 1, 2, 3, and 7 of Chapter 1, Title 32 of the Revised Civil Statutes of Texas of 1925,<sup>1</sup> may elect all or a part of its directors for terms not exceeding five (5) years. As amended Acts 1939, 46th Leg., p. 131, § 1; Acts 1939, 43th Leg., p. 132, § 1.

<sup>1</sup> Article 1302.

Effective March 18 and April 27, 1939.

Section 2 of the amendatory acts of 1939 repeal all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 1334. 1168, 666, 590 Stock and Certificates

The stock of any corporation created under this Title shall be deemed personal estate and shall be transferable only on the books of the corporation in such manner as the bylaws may prescribe. Every shareholder in the corporation shall be entitled to have a certificate or certificates representing the number of shares owned by him signed by such officer

or officers as the bylaws shall prescribe and bearing the corporate seal; but the signatures of such officers and the seal of the corporation upon such certificates may be facsimiles, engraved or printed, where such certificate is signed by a duly authorized transfer agent and a registrar, and the fact that at the time of actual issue any officer whose name appears on such certificate shall have ceased to be such officer shall not invalidate the signature or certificate. This Act shall not be construed to affect the validity of any stock certificates heretofore issued and signed or sealed by the facsimile seal or signature adopted by such corporation. As amended Acts 1939, 46th Leg., p. 134, § 1.

Effective April 5, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

## CHAPTER EIGHT—DISSOLUTION OF CORPORATIONS

### Art. 1387. [1205] [680] [604] How dissolved

Bill of sale required when buying logs or pulpwood, see art. 7363a.

Staves or cross ties, verified statement to be filed by buyer not securing bill of sale or deed, see art. 7363a.

## CHAPTER SEVENTEEN—TRUST COMPANIES AND INVESTMENTS

### LOAN AND BROKERAGE COMPANIES

[Art. 1524a. Corporations for loaning money and dealing in bonds and securities without banking and discounting privileges; regulations]

Sec. 1. This Act shall embrace corporations heretofore created and hereafter created having for their purpose or purposes any or all of the powers now authorized in Subdivisions 48, 49 or 50 of Article 1302, Revised Civil Statutes of Texas, 1925, and heretofore or hereafter created having in whole or in part any purpose or purposes now authorized in Chapter 275, Senate Bill Number 232 of the General and Special Laws of the Regular Session of the 40th Legislature. No such corporation shall act as agent or trustee in the consolidation of or for the purpose of combining the assets, business or means of other persons, firms, associations or corporations, nor shall such corporation as agent or trustee carry on the business of another. No such corporation shall offer for sale or sell its bonds, notes, certificates, debentures or other obligations unless it shall have an actual paid in capital of not less than Ten Thousand (\$10,000.00) Dollars.

Sec. 2. The Banking Commissioner of Texas shall examine or cause to be examined such corporations annually or oftener if he deems it necessary. Said corporation shall pay the actual traveling expenses, hotel bills, and all other actual expense incident to such examination and a fee not exceeding one-eighth of one per cent of its actual paid-in capital. If such corporation had not sold in Texas its bonds, notes, certificates, debentures or other obligations and does not offer for sale or sell in Texas its bonds, notes, certificates, debentures or other obligations, the Banking Commissioner of Texas, in lieu of an examination, shall accept a financial statement made on such form, containing such information as he desires. The Banking Commissioner of Texas is hereby authorized to appoint not to exceed one examiner for every fifty (50) of such corpora-

tions. Each examiner shall take the oath and furnish a bond as required of State Bank Examiners, and shall receive an annual salary as follows:

Three Thousand (\$3,000.00) Dollars for the first year; Three Thousand Five Hundred (\$3,500.00) Dollars for the second year; Four Thousand (\$4,000.00) Dollars for the third year and subsequent years. Such examiner shall have authority to administer oath in performance of his duties.

Sec. 3. Refusal on the part of any such corporation to submit to an examination by the Banking Commissioner of Texas, or his representatives, or the withholding of information from the Banking Commissioner of Texas, or his representatives, shall constitute grounds for forfeiture of the charter of such corporation at the suit of the Attorney General upon the request of the Banking Commissioner of Texas.

Sec. 4. Such corporation that has sold in Texas its bonds, notes, certificates, debentures or other obligations or is offering for sale in Texas its bonds, notes, certificates, debentures or other obligations, shall publish in some newspaper of general circulation in the County where it has its principal place of business, on or before the first day of February each year a statement of its condition on the previous 31st day of December, in such form as may be required by the Banking Commissioner of Texas showing under oath its assets and liabilities and shall file a copy of such statement with the Banking Commissioner of Texas together with a fee of Ten (\$10.00) Dollars for filing.

Such corporation that has not sold in Texas its bonds, notes, certificates, debentures or other obligations and does not offer for sale or sell in Texas its bonds, notes, certificates, debentures or other obligations, shall file with the Banking Commissioner of Texas on or before the first day of February of each year a statement of its condition on the previous 31st day of December, in such form as may be required by the Banking Commissioner of Texas showing under oath its assets and liabilities, together with a fee of Two (\$2.00) Dollars for filing, which report, when so filed, shall not be open to the public but shall be for the information of the Banking Commissioner and his employees. The Banking Commissioner, or his authorized assistants or representatives, shall not make public the contents of said report, or any information derived therefrom, except in the course of some judicial proceedings in this State. As amended Acts 1937, 45th Leg., p. 405, ch. 204, § 1; Acts 1939, 46th Leg., p. 135, § 1.

Effective 90 days after June 21, 1939,  
date of adjournment.

Section 2 of the amendatory act of 1939  
repeals all conflicting laws and parts of  
laws.

Sec. 7. All bonds, notes, certificates, debentures, or other obligations sold in Texas by any corporation affected by a provision of this Act shall be secured by securities of the reasonable market value, equaling at least at all times the face value of such bonds, notes, certificates, debentures or other obligations. If such corporation sells in Texas bonds, notes, certificates, debentures or other obligations upon which it receives installment payments, such bonds, notes, certificates, debentures and other obligations shall be secured at all times by securities having the reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding. Said securities shall be placed in the hands of a corporation having trust powers approved by the Banking Commissioner of Texas as Trustee under a trust agreement, the terms of which shall be approved in writing by the Banking Commissioner of Texas, or at the option of any such corporation which sells in Texas bonds, notes, certificates, debentures or other obligations upon which it re-

ceives installment payments, such corporation may upon application to, and approval by, the Banking Commissioner of Texas deposit securities having a reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding with the State Treasurer of Texas in lieu of such deposits with a Trustee as set forth hereinabove, provided that, in the event such deposit is made with the State Treasurer of Texas in lieu of such Trustee: (1) Such corporation shall file a certified statement of reserve liability and detailed list of securities so deposited, semi-annually with the Banking Commissioner of Texas, which certification shall be made by a Certified Public Accountant, who shall be approved by and be satisfactory to the Banking Commissioner. The corporation shall pay a fee of Fifteen (\$15.00) Dollars for filing each such statement. (2) Said securities shall be deposited with the State Treasurer under a trust agreement, the terms of which shall be approved by the Banking Commissioner.

It is further provided that if any corporation, transacting business under this Act, shall have heretofore deposited securities with a corporation having trust powers under a trust agreement as provided hereinabove desires to avail itself of the option to deposit securities with the State Treasurer of Texas in lieu of such Trustee, it shall first secure a written certificate from the Banking Commissioner of Texas approving said securities on deposit with the Trustee as being eligible and sufficient for deposit with the State Treasurer, and it shall file a copy of said certificate with the State Treasurer of Texas, and with the said Trustee whereupon said Trustee shall deliver said securities so approved to the State Treasurer of Texas together with the trust agreement and/or agreements relating thereto, who shall issue his receipt therefor to said Trustee, furnishing a copy thereof to the corporation owning the same, which said receipt of the State Treasurer of Texas shall fully and finally relieve, acquit, and discharge the said Trustee of all responsibility and liability under such trust agreement, and/or agreements, whereupon said State Treasurer shall be considered as, and be substituted as, Trustee instead and in the place of the original Trustee.

In the event that the Banking Commissioner approves part of said securities with the said Trustee as being sufficient and eligible for deposit with the State Treasurer, but does not approve all of said securities with said Trustee, and/or in the event there is a deficiency of securities with said Trustee, the corporation owning said securities and desiring to avail itself of its option of depositing said securities with the State Treasurer, shall deposit with the State Treasurer of Texas a sufficient amount of eligible securities as defined herein securing the approval of the Banking Commissioner of Texas as to said securities so that the amount of securities so deposited together with the amount of securities with said Trustee that are approved by the Banking Commissioner as being eligible and sufficient have the reasonable market value equal to the withdrawal or cancellation value of such obligations then outstanding. Whereupon the said Trustee shall, as hereinabove set forth, deliver to the State Treasurer of Texas the securities in its hands, taking the receipt of the State Treasurer therefor, and in such case such Trustee shall be fully and finally relieved, acquitted, and discharged of all responsibility and liability under such trust agreement, and/or agreements.

Any such corporation which sells in Texas bonds, notes, certificates, debentures or other obligations upon which it receives installment payments, which upon the effective date of this Act has securities deposited with a Trustee hereunder, may, with the written consent of the Bank-

ing Commissioner continue under said trust agreement, and/or agreements as to bonds, notes, certificates, debentures or other obligations already sold in Texas upon which it receives installment payments, and avail itself of the option to deposit such securities as to future sales of said obligations with the State Treasurer of Texas by complying with this Act in the same manner that a corporation hereafter organized would be required to comply with this Act.

All trust agreements hereafter made as to any securities placed with the State Treasurer under this Act shall provide that such securities may be substituted with securities of equal value by the filing by the corporation with the State Treasurer of a certificate of authorization to do so from the Banking Commissioner of Texas, and that any of said securities may be withdrawn by the corporation from the State Treasurer by the filing with the State Treasurer of a certificate issued by the Banking Commissioner that the withdrawing of the particular securities is authorized by the Banking Commissioner, and that its withdrawal will not reduce the amount of securities below the amount required by this Act. Provided, that before selling or offering for sale on the installment plan in Texas any such bonds, notes, certificates, debentures, or other obligations, such corporation shall file with the Banking Commissioner specimen copies of such bonds, notes, certificates, debentures or other obligations. Unless within sixty (60) days after the filing of any such specimen copy the Banking Commissioner issues a notice to such corporation of a hearing to determine whether such instrument is fraudulent, unreasonable or inequitable, or has an unreasonable or inequitable cash surrender value, the same shall be deemed to have been approved by the Banking Commissioner. But if, after hearing pursuant to notice issued within said period of sixty (60) days, the Banking Commissioner should find and determine that any such bond, note, certificate, debenture, or other obligation is either fraudulent, unreasonable, or inequitable, or has an unreasonable or inequitable cash surrender value, such corporation shall have no right to sell or offer for sale in the State of Texas such bond, note, certificate, debenture or other obligation so found to be fraudulent, unreasonable, or inequitable, or has an unreasonable or inequitable cash surrender value. Provided, that any such corporation may have such finding reviewed in the District Court of Travis County, Texas, by filing suit against the Banking Commissioner in such Court at any time within sixty (60) days after receiving notice of such finding. In such suit such corporation shall be entitled to a trial de novo on the issues on which the Banking Commissioner shall have made such adverse findings. If as the result of such trial the issues shall be determined favorably to such corporation, the adverse findings of the Banking Commissioner shall have no further binding force or effect; and in that event, the right to sell such notes, bonds, or other obligations may be protected by injunction issued in said cause. Provided, that either party shall have the right of appeal according to Statutes governing appeals in civil cases.

All cash or securities left with the State Treasurer in compliance with Article 696, Revised Civil Statutes of 1925, shall be considered as part of the collateral required under this section.

All bonds, notes, certificates, debentures or other obligations, sold or offered for sale in Texas by such corporation shall definitely describe the character of collateral securing the payment of such obligation.

In the event any such corporation shall sell or offer for sale in Texas, any bonds, notes, certificates, debentures or other obligations without complying with this section, such conduct shall constitute

grounds for the forfeiture of its charter and for receivership at the suit of the Attorney General, which suit shall be brought upon the request of the Banking Commissioner of Texas. [As amended Acts 1937, 45th Leg., p. 405, ch. 204, § 2.]

Amendment of 1937, effective April 26, 1937.

See note to § 4 ante.

Sec. 8. Every officer, director, employee or agent of such corporation whose bonds, notes, certificates, debentures or other obligations have been sold and are outstanding, or such corporation that is offering for sale its bonds, notes, certificates, debentures or other obligations, who handles or has the custody of funds, books or records belonging to such corporation, shall, before entering upon the discharge of his duties, give a good and sufficient bond in the sum as shall be fixed by the board of directors of such corporation, conditioned for the faithful performance of his duties and such pecuniary loss as the association may sustain for money or other securities embezzled wrongfully, abstracted or willfully misapplied by any such officer or employee in the course of his employment as such, or in the course of his employment in any other position in such corporation. Such bond shall be made by a surety company authorized to do business in this State. The terms, amount of the bond and the solvency of said surety company shall be subject to the approval of the Banking Commissioner of Texas; provided, such bond shall not be required of any officer, director, employee or agent of any corporation which carries fidelity insurance upon such officer, director, employee or agent in an amount and upon conditions approved by the Banking Commissioner. As amended Acts 1939, 46th Leg., p. 136, § 1.

Effective May 22, 1939.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

#### [Art. 1524b. Housing corporations authorized]

Housing Authorities in cities of 230,000 to 250,000 population, see article 1269k.

### CHAPTER EIGHTEEN—MISCELLANEOUS

#### RURAL ELECTRIFICATION [New].

Art.

1528b. Electric Cooperative Corporation Act; Short Title

#### RURAL ELECTRIFICATION [NEW.]

#### Art. 1528b. Electric Cooperative Corporation Act; Short Title

Section 1. This Act may be cited as the "Electric Cooperative Corporation Act."

##### Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(1) "Corporation" means a corporation organized pursuant to the provisions of this Act;

(2) "Board" means a board of directors of a corporation organized under this Act;

(3) "Member" means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein;



(4) "Federal agency" includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the United States of America heretofore or hereafter created;

(5) "Person" includes any natural person, firm, association, corporation, business trust, partnership, Federal agency, State or political subdivision thereof or any body politic;

(6) "Acquire" means and includes construct, acquire by purchase, lease, devise, gift, or other mode of acquisition;

(7) "Obligations" include bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a corporation;

(8) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough, having a population in excess of fifteen hundred (1,500) inhabitants, and includes both the farm and non-farm population thereof.

#### Purpose

Sec. 3. Cooperative, non-profit, membership corporations may be organized under this Act for the purpose of engaging in rural electrification by any one or more of the following methods:

(1) The furnishing of electric energy to persons in rural areas who are not receiving central station service;

(2) Assisting in the wiring of the premises of persons in rural areas or the acquisition, supply, or installation of electrical or plumbing equipment therein;

(3) The furnishing of electric energy, wiring facilities, electrical or plumbing equipment, or services to any other corporation organized under this Act or to the members thereof.

#### Powers of corporation

Sec. 4. Each corporation shall have power:

(1) To sue and be sued, complain and defend, in its corporate name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy to its members only, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary, convenient, or useful;

(5) To assist its members only to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;

(6) To furnish to other corporations organized under this Act, or to the members thereof, electric energy, wiring facilities, electrical and plumbing equipment, and services convenient or useful;

(7) To acquire, own, hold, use, exercise, and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights of way, and easements necessary, useful, or appropriate;

(8) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;

(9) To borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenues, or income;

(10) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;

(11) To have and exercise the power of eminent domain for the purpose and in the manner provided by the condemnation laws of this State for acquiring private property for public use, such right to be paramount except as to property of the State, or of any political subdivision thereof;

(12) To accept gifts or grants of money, services, or property, real or personal;

(13) To make any and all contracts necessary or convenient for the exercise of the powers granted in this Act;

(14) To fix, regulate, and collect rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation;

(15) To conduct its business, and have offices within or without this State;

(16) To elect or appoint officers, agents, and employees of the corporation, and to define their duties and fix their compensation;

(17) To make and alter by-laws, not inconsistent with the articles of incorporation or with the laws of this State for the administration and regulation of the affairs of the corporation;

(18) To do and perform, either for itself or its members, or for any other corporation organized under this Act, or for the members thereof, any and all acts and things, and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized.

#### **Incorporators**

Sec. 5. Any three or more natural persons of the age of twenty-one (21) years or more, residents of this State, may act as incorporators of a corporation to be organized under this Act by executing articles of incorporation as hereinafter provided in this Act.

#### **Articles of incorporation**

Sec. 6. (a) The articles of incorporation shall state:

(1) The name of the corporation, which name shall include the words "Electric Cooperative" and the word "Corporation," "Incorporated," "Inc.," "Association," or "Company" and the name shall be such as to distinguish it from any other corporation organized and existing under the laws of this State;

(2) The purpose for which the corporation is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members, or until their successors are elected and qualify;

(4) The number of directors, not less than three (3), to be elected at the annual meetings of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The period of duration of the corporation, which may be perpetual;

(7) The terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but if expressly so stated the determination of such matters may be reserved to the directors by the by-laws;

(8) Any provisions, not inconsistent with law, which the incorporators may choose to insert, for the regulation of the business and the conduct of the affairs of the corporation.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

#### **Prohibition on use of words "electric cooperative"**

Sec. 7. The words "Electric Cooperative" shall not be used in the corporate name of corporations organized under the laws of this State, or authorized to do business herein, other than those organized pursuant to the provisions of this Act.

#### **Execution, filing, and recording of articles of incorporation**

Sec. 8. When the incorporators of any corporation shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this Act, said officer shall receive, file, and record the articles of incorporation of such corporation in his office, upon application and payment of all fees therefor, and give a certificate showing the recording of such articles and authority to do business thereunder. The articles shall thereupon be filed in the office of the Secretary of State, who shall record same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the articles, or of the record thereof, certified under the Great Seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the articles in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing.

#### **Renewal of articles of incorporation**

Sec. 9. Any corporation organized under this Act, whose articles of incorporation have expired by limitation, may revive such articles with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the time of the expiration of its said articles, by filing with the consent of a majority of its members, new articles of incorporation under the provisions of this Act, reciting therein such original privileges, immunities, and rights of property, and by filing therewith a certified copy of such original expired articles.

#### **Organization Meeting**

Sec. 10. After the issuance of the certificate of incorporation, an organization meeting shall be held, at the call of a majority of the incor-

porators, for the purpose of adopting by-laws and electing officers and for the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting but such notice may be waived in writing.

#### **By-laws**

Sec. 11. The power to make, alter, amend, or repeal the by-laws of the corporation shall be vested in the Board of Directors. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

#### **Qualification of members**

Sec. 12. All persons in rural areas proposed to be served by a corporation, who are not receiving central station service, shall be eligible to membership in a corporation. No person other than the incorporators shall be, become, or remain a member of a corporation unless such person shall use or agree to use electric energy or, as the case may be, the facilities, supplies, equipment, and services furnished by a corporation. A corporation organized under this Act may become a member of another such corporation and may avail itself fully of the facilities and services thereof.

#### **Meetings of members**

Sec. 13. (a) Meetings of members may be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the principal office of the corporation in this State.

(b) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, by the Board of Directors, or a majority thereof, by a petition signed by not less than one-tenth of all the members or by such other officers or persons as may be provided in the articles of incorporation or the by-laws.

#### **Notice of members' meetings**

Sec. 14. Written or printed notice stating the place, day, and hour of the meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary, or the officers or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mails in a sealed envelope addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. Notice of meetings of members may be waived in writing.

#### **Voting by members**

Sec. 15. Each member present shall be entitled to one and only one vote on each matter submitted to a vote at a meeting of members, but voting by proxy or by mail may be provided for in the by-laws.

**Certificate of membership**

Sec. 16. When a member of a corporation has paid the membership fee in full, a certificate of membership shall be issued to such member. Memberships in the corporation and the certificates shall be non-transferable. The certificate of membership shall be surrendered to the corporation upon the resignation, expulsion, or death of the member. Except for debts lawfully contracted between him and the corporation, no member shall be liable for the debts of the corporation to an amount exceeding the sum remaining unpaid on his membership fee.

**Quorum of members**

Sec. 17. Unless otherwise provided in the articles of incorporation, a majority of the members present, in person or represented by proxy, shall constitute a quorum for the transaction of business at a meeting of members, but if voting by mail is provided for in the by-laws, members so voting shall be counted as if present.

**Board of directors**

Sec. 18. The business and affairs of a corporation shall be managed by a Board of Directors, not less than three (3) in number, which shall exercise all the powers of the corporation except such as are conferred upon the members by this Act, by the articles of incorporation or by the by-laws of the corporation. The by-laws may prescribe qualifications for directors.

**Election, qualification, and compensation of directors**

Sec. 19. The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the by-laws, by the members. The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as may be provided in the by-laws.

**Vacancies**

Sec. 20. Any vacancy occurring in the Board and any directorship to be filled, shall be filled as provided in the by-laws by persons who shall serve until directors may be regularly elected as provided for in this Act.

**Quorum of directors**

Sec. 21. A majority of the Board shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors, present at a meeting at which a quorum is present, shall be the act of the Board, unless the act of a greater number is required by the articles of incorporation or the by-laws.

**Directors' meetings**

Sec. 22. Meetings of the Board, regular or special, shall be held at such place and upon such notice as the by-laws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

**Officers, agents, and employees**

Sec. 23. (a) The Board shall elect from its number a president, a vice-president, a secretary, and a treasurer, but the same person may be elected to the office of secretary and treasurer. The powers and duties of the foregoing officers, as well as their term of office and compensation shall be provided for in the by-laws.

(b) The Board shall appoint such other officers, agents, and employees as it deems necessary and fix their powers, duties, and compensation.

(c) Any officer, agent, or employee elected or appointed by the Board, may be removed by it whenever in its judgment the best interests of the corporation will be served.

**Executive committee**

Sec. 24. Any corporation may, by its by-laws, provide for an executive committee to be elected from and by its Board of Directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by this Act.

**Non-profit operation**

Sec. 25. (a) Each corporation shall be operated without profit to its members but the rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation shall be sufficient at all times.

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and

(2) For the creation of reserves.

(b) The revenues of the corporation shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation, and contingencies as the Board may from time to time prescribe.

(c) Revenues not required for the purposes set forth in Sub-section (b) of this Section shall be returned from time to time to the members on a pro rata basis according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy, or otherwise as the Board determines; but such return may be made by way of general rate reduction to members, if the Board so elects.

**Amendment of articles of incorporation**

Sec. 26. A corporation may amend its articles of incorporation by a majority vote of the members, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose. The power to amend shall include the power to accomplish any desired change in the provisions of its articles of incorporation and to include any purpose, power, or provision which would be authorized to be included in original articles of incorporation if executed at the time the amendment is made. Articles of amendment signed by the president or vice-president, and attested by the secretary certifying to such amendment and its lawful adoption shall be executed, acknowledged,

filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act; and as soon as the Secretary of State shall have accepted the articles of amendment for filing and recording, and issued a certificate of amendment, the amendment or amendments shall be in effect and the certificate of the Secretary of State shall be evidence of such filing.

#### Consolidation

Sec. 27. (a) Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than three (3); the time of the annual meeting and election, and the name of at least three (3) persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under this Act.

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all of the powers of a corporation as originally organized hereunder.

#### Dissolution

Sec. 28. (a) Any corporation may dissolve by majority vote of the members, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast in person or by proxy by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

(b) Such corporation shall, however, continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

(c) Any corporation which purports to have been incorporated or re-incorporated under this Act but which has not complied with all of the requirements for legal corporate existence may nevertheless file a certificate of dissolution in the same manner as a validly existing corpo-

ration. The certificate of dissolution, in such case, may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten (10) days' notice mailed to the last known post-office address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

#### Fees

Sec. 29. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Ten Dollars (\$10).

(2) Filing of articles of amendment and issuing a certificate of amendment, Two Dollars and Fifty Cents (\$2.50).

(3) Filing articles of consolidation and issuing a certificate with respect thereto, Ten Dollars (\$10).

(4) Filing articles of dissolution, Two Dollars and Fifty Cents (\$2.50).

#### Exemption from excise taxes—license fee

Sec. 30. Corporations formed hereunder shall pay annually, on or before May first, to the Secretary of State, a license fee of Ten Dollars (\$10) and such corporations shall be exempt from all other excise taxes of whatsoever kind or nature.

#### Limited exemption from securities act

Sec. 31. Whenever any corporation organized under this Act shall have borrowed money from any Federal agency, the obligations issued to secure the payment of such money shall be exempt from the provisions of the Texas Securities Act, (Chapter 100, Acts of the Forty-fourth Legislature, Regular Session), or any Acts amendatory thereof, nor shall the provisions of said Act apply to the issuance of membership certificates.

#### Defectively organized corporations

Sec. 32. In the event any corporation has filed defective articles of incorporation or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles and do and perform all acts and things necessary in the premises for the correction of such defects. The action so taken shall be valid and binding upon all persons concerned and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises shall not be questioned.

#### Act extended to existing corporations

Sec. 33. Any existing cooperative or nonprofit corporation or association, organized under any other law of this State, for the purpose of engaging in rural electrification, may, by a majority vote of the members present in person or by proxy at a meeting called for that purpose, amend its articles of incorporation so as to comply with this Act.

#### Construction of act

Sec. 34. This Act shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

#### Separability of provisions

Sec. 35. If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of



the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

**Act complete in itself**

Sec. 36. This Act is complete in itself and shall be controlling. The provisions of any other law of this State, except as provided in this Act, shall not apply to a corporation organized, or in process of organization, under this Act. Acts 1937, 45th Leg., p. 161, ch. 86.

Effective April 1, 1937.

Section 37 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the organization of cooperative, non-profit, membership corporations for the purpose of engaging in rural electrification; defining terms; defining the powers and duties of such corporations; providing for the number of incorporators; providing the manner in which such corporations may be organized and prescribing the contents of the articles of incorporation; prohibiting the use of the words "Electric Cooperative" by other corporations; providing for the execution, filing and recording of articles of incorporation and for the renewal of articles of incorporation; providing for the organization meeting, by-laws, qualifications of members, meetings of members, notice of members' meetings, voting by members, certificates of membership, and exempting members from liability for the debts of the corporation, and quorum of members; providing for a Board of Directors and for the election, qualification, and compensation of directors, for the filling

of vacancies on the Board of Directors, for directors' meetings, for the election of officers and selection of agents and employees, and for the appointment of an executive committee; providing that such corporations shall be operated without profit and providing for the conduct and business management of such corporations; providing for the amendment of articles of incorporation, and for the consolidation and dissolution of such corporations; prescribing filing fees; providing for an annual license fee for such corporations and exempting such corporations from all other excise taxes; providing a limited exemption of all such corporations from the provisions of the Texas Securities Act. (Chapter 100, Acts of the Forty-fourth Legislature, Regular Session); providing that defectively organized corporations under this Act may perfect their corporate organizations; extending the provisions of this Act to certain existing corporations; providing for the construction of the Act; declaring the terms and provisions of this Act to be severable; providing that this Act shall be complete in itself, and declaring an emergency. [Acts 1937, 45th Leg., p. 161, ch. 86.]

## TITLE 33—COUNTIES AND COUNTY SEATS

## CHAPTER THREE—CORPORATE RIGHTS AND POWERS

## Art. 1580. 1373, 797, 684 Agents to contract for county

Counties of 100,000 to 150,000

Acts 1933, 43rd Leg., p. 110, ch. 55, as amended by Acts 1937, 45th Leg., p. 599, ch. 301, read as follows:

"Section 1. In all counties in this State having a population of more than one hundred thousand (100,000) inhabitants and less than one hundred and fifty thousand (150,000) inhabitants, as shown by the latest United States Census, and containing two (2) cities of fifty thousand (50,000) inhabitants, or more, each, as shown by the latest United States Census, the Commissioners Court of such county shall appoint a suitable person who shall act as County Purchasing Agent for such county, who shall hold his office at the pleasure of the Commissioners Court or a majority thereof; it shall be the duty of such agent to make all purchases for such county of all supplies, materials, and equipment required or used by such county or by a subdivision, officer, or employee thereof excepting such purchases as may by law be required to be made by competitive bids, and to contract for all repairs to property used by such county, its subdivisions, officers, and employees, except such as by law are required to be contracted for by competitive bids. All purchases made by such agent shall be paid for by warrants drawn by the County Auditor on the County Treasurer of such county as in the manner now provided by law. It shall be unlawful for any person, firm, or corporation, other than such Purchasing Agent, to purchase any supplies, materials, and equipment for, or to contract for any repairs to property used by such county or any subdivision, officer, or employee thereof, and no warrant shall be drawn by the County Auditor or honored by the County Treasurer of any such county for any purchases except by such agent and those made by competitive bid as now provided by law. On the 1st day of July of each year such Purchasing Agent shall file with the Commissioners Court of such county an inventory of all property of the county and of each subdivision, officer, or employee thereof then on hand, and it shall be the duty of the County Auditor to carefully examine such inventory and to make an accounting for all property purchased or previously inventoried and not appearing in such inventory. In order to prevent unnecessary purchases, such agent shall have authority and it shall be his duty to transfer county supplies, materials, and equipment from

any subdivision, department, officer, or employee of the county when such supplies, materials, or equipment are not actually needed or used by such subdivision, department, officer, or employee to any such subdivision, department, officer, or employee that may require such supplies, and materials, or the use of such equipment; and such agent shall furnish to the County Auditor a list of such supplies, materials, and equipment so transferred. Such agent shall receive, as compensation for his services, a salary not to exceed Three Thousand Dollars (\$3,000) per year, payable in equal monthly installments. Eighty (80) per cent of such salary shall be paid out of the Road and Bridge Fund and twenty (20) per cent thereof out of the General Fund of such county by warrants drawn on the County Treasurer by the County Auditor.

"Sec. 2. It shall be the duty of such Purchasing Agent to supervise all purchases made on competitive bid and to see that all supplies, materials, and equipment contracted for, are delivered to the proper county officer or department in accordance with the contract of purchase.

"Sec. 3. Such County Purchasing Agent in making purchases for the county, as above provided, shall be governed by and subject to the "Uniform Budget Law" and to all other laws governing the purchase of supplies, materials, and equipment for the use of the county, its subdivisions, officers, and employees.

"Sec. 4. The provisions of this Act shall apply to all purchases of supplies, materials, and equipment for the use of the county and its officers whether contracted for by the Commissioners Court, or any officer authorized to bind the county by contract and shall include purchases made by officers payable out of fees of office or otherwise. It is the intention of this Act to cover all purchases of supplies, materials, and equipment of every kind and character. Any officer making such purchases out of fees of office shall not be entitled to deduct the amount of said purchases from the amount of excess fees, if any, due the county.

"Sec. 5. Any officer, agent, or employee of such county, its subdivisions, or departments, or any other person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Two Hundred Dollars (\$200), nor more than One Thousand Dollars (\$1,000) or imprisoned in the county jail for not less than thirty (30) days nor more than

one year, or by both such fine and imprisonment."

Amendment of 1937, effective May 10, 1937.

Counties of 140,000 to 290,000

Acts 1939, 46th Leg., Spec.L., p. 602, reads as follows:

"Section 1. In all counties in this State having a population of more than one hundred and forty thousand (140,000) inhabitants and less than two hundred ninety thousand (290,000) inhabitants according to the last preceding Federal Census, and wherein is situated an incorporated city having a population in excess of one hundred forty thousand (140,000) inhabitants, according to the last preceding Federal Census, a majority of a board composed of the Judges of the District Courts and the County Judge of such county, shall appoint a suitable person who shall act as the County Purchasing Agent for such county, who shall hold his office, unless removed by said Judges, for a period of two (2) years, or until removed from office by said Judges, or until his successor is appointed and qualified, and shall execute a bond in the sum of Five Thousand (\$5,000.00) Dollars, payable to said county for the faithful performance of his duties. It shall be the duty of such agent to make all purchases for such county of all supplies, materials and equipment required or used by such county or by a subdivision, officer, or employee thereof, excepting such purchases as may by law be required to be made by competitive bid, and to contract for all repairs to property used by such county, its subdivisions, officers, and employees, except such as by law are required to be contracted for by competitive bid. All purchases made by such agent shall be paid for by warrants drawn by the County Auditor on the County Treasurer of such county as in the manner now provided by law. It shall be unlawful for any person, firm, or corporation, other than such purchasing agent, to purchase any supplies, materials, and equipment for, or to contract for any repairs to property used by, such county or subdivision, officer, or employee thereof, and no warrant shall be drawn by the County Auditor or honored by the County Treasurer of any such county for any purchases except by such agent and those made by competitive bid as now provided by law. On the first day of July of each year such purchasing agent shall file with the County Auditor and each of said Judges of such county an inventory of all property of the county and of each subdivision, officer, or employee thereof then on hand, and it shall be the duty of the County Auditor to carefully examine such inventory and to make an accounting for all property purchased or previously inventoried and not appearing in such inventory. In order to prevent unnecessary purchases, such agent shall have authority and it shall be his duty to transfer county supplies, materials, and equipment from any subdivision, department, officer, or employee of the county when such supplies,

materials, or equipment are not actually needed or used by such subdivision, department, officer, or employee to any such subdivision, department, officer, or employee that may require such supplies and materials, or the use of such equipment; and such agent shall furnish to the County Auditor a list of such supplies, materials, and equipment so transferred. Such agent shall receive as compensation for his services a salary of Three Thousand Six Hundred (\$3,600.00) Dollars per year, payable in monthly installments of Three Hundred (\$300.00) Dollars each. Eighty (80%) per cent of such salary shall be paid out of the Road and Bridge Fund and twenty (20%) per cent thereof out of the General Fund of such county by warrant drawn on the County Treasurer by the County Auditor. Said agent shall have one assistant who shall receive as compensation for his services a salary of Twenty-four Hundred (\$2,400.00) Dollars per year, payable in monthly installments of Two Hundred (\$200.00) Dollars each. Said agent and said assistant may have such help, equipment, supplies, and traveling expenses, with the approval of said board of Judges, as they may deem advisable, the amount of said expenses to be approved by said board." As amended Acts 1939, 46th Leg., Spec.L., p. 605, § 1.

Effective April 20, 1939.

"Sec. 2. It shall be the duty of such purchasing agent to supervise all purchases made on competitive bid and to see that all supplies, materials, and equipment contracted for are delivered to the proper county officer or department in accordance with the contract of purchase.

"Sec. 3. Such county purchasing agent in making purchases for the county, as above provided, shall be governed by and subject to the 'Uniform Budget Law' and to all other laws governing the purchase of supplies, materials, and equipment for the use of the county, its subdivisions, officers, and employees.

"Sec. 4. The provisions of this Act shall apply to all purchases of supplies, materials, and equipment for the use of the county and its officers whether contracted for by the Commissioners Court, or any officer authorized to bind the county by contract and shall include purchases made by officers payable out of fees of office or otherwise. Provided, however, that it shall not be the duty of said purchasing agent to make purchases for City-County Hospitals or other joint undertakings of the city and county. It is the intention of this Act to cover all purchases of supplies, materials, and equipment of every kind and character, made for or in behalf of said counties. Any officer making such purchases out of fees of office in violation of the provisions of this Act, shall not be entitled to deduct the amount of said purchases from the amount of such fees, if any, due the county.

"Sec. 5. Any officer, agent, or employee of such county, its subdivisions, or de-

partments, or any other person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Ten Dollars (\$10) nor more than One Thousand Dollars (\$1,000) or imprisonment in the county jail for not less than thirty (30) days or more than one year,

or by both such fine and imprisonment. Each act shall be a separate offense.

"Sec. 6. If any section, paragraph, or clause of this Act is held invalid or unconstitutional, it shall not affect the remainder hereof, and the Legislature hereby declares that it would have enacted this Act without such invalid part."

Effective March 31, 1939.

**Art. 1581a. County Home Rule Charters; Adoption. Ineffective, see Art. 1606a, § 21, post.**

This article, (Acts 1933, 43rd Leg., p. 784, ch. 232) which was adopted in anticipation of the amendment to Const. art. IX, section 3 (adopted Aug. 26, 1933) providing for County Home Rule, was made ineffective by Acts 1933, 43rd Leg., 1st C.S. p. 249, ch. 91, § 21, set out as article 1606a, § 21 of this title, which provides that this article "shall not have effect after the instant at which this Act

may be in effect, but all procedures taken thereunder (relating to the formulation, circulation, presentation and prosecution of petitions, including all orders and notices of commissioners courts relative to such petition conventions held or other acts done) hereby are validated, to the same effect as though the same had been done hereunder."

## CHAPTER FIVE—COUNTY SEATS

**Art. 1605. [1399] Location of offices; branch offices discretionary with commissioner court; bonds of deputies**

The County Judge, Sheriff, Clerks of the District and of the County Courts, County Treasurer, Assessor and Collector of Taxes, County Surveyor and County Attorney of the several counties of this State, shall keep their offices at the county seats of their respective counties; provided, however, that in all counties having a city or cities, other than the county seats, within their boundaries, having a population of five thousand (5,000) and over, and in counties of over three hundred fifty thousand (350,000), according to the last Federal Census, the Assessor and Collector of Taxes when authorized by Order of the Commissioners' Court may maintain a branch office in said city or cities, and may appoint one or more Deputies for said offices, and the salaries to be paid said Deputies together with the office rent and other expenses incidental to maintaining said offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes and shall be paid in the manner now provided by law for the payment of the expenses of the Assessor and Collector of Taxes; and provided further that in all counties having a population of more than seventy-four thousand (74,000), according to the last Federal Census, and containing one or more cities or towns, other than the county seat, which has in excess of one thousand (1,000) inhabitants, according to the last Federal Census, said Tax Assessor and Collector with the consent and approval of the Commissioners' Court may maintain a branch office and may appoint a Deputy Tax Collector in each such town or city, who shall have the right to collect taxes from all persons who desire to pay their taxes to him, and to issue a valid receipt therefor. Such Deputy shall enter into such bond, payable to the County Judge of the County, as the Tax Assessor and Collector and Commissioners' Court of the county may require. The period of time such branch offices shall be maintained, and the salary of such Deputy Collector and the period of time he shall hold such office shall be fixed by the Commissioners' Court and such Deputy Collector shall be subject to all of the terms and provisions of the law relating to Deputy Tax Collectors. The Tax Collector shall remain liable on his bonds for all taxes collected by such

Deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the Tax Collector or such Deputy. Nothing contained herein shall be construed as making it mandatory upon the Assessor and Collector of Taxes and the Commissioners' Courts of such counties to maintain such branch offices and appoint such Deputies, but the establishment of such branch offices and the appointment shall wholly be within the discretion of the Commissioners' Courts of such counties. When such branch office or offices are established and a Deputy or Deputies are appointed hereunder, the salary or salaries to be paid and expense necessary to maintain said office or offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes, and shall be paid as now provided by law for the payment of the expenses of the Assessor and Collector of Taxes. [As amended Acts 1937, 45th Leg., p. 63, ch. 39, § 1.]

Effective March 12, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

## TITLE 34—COUNTY FINANCES

## 2. COUNTY AUDITOR

Art.

- 1645a. County auditors in counties of 19,150 to 19,175 inhabitants [New].
- 1645a-1. County auditors in certain counties to act as purchasing agents; compensation; auditors for school districts [New].
- 1645a-2. County auditor's office in counties of 28,700 to 29,000 abolished; county auditors in counties of 27,545 to 27,555 population [New].
- 1645a-3. Appointment of county auditors in counties of 20,100 to 20,150 population and less than \$15,000,000 tax valuation [New].
- 1645a-4. Salary of Auditor in certain counties [New].
- 1645a-5. Auditors in counties of 30,000 to 30,050 [New].
- 1645a-6. County auditors in counties of 14,850 to 14,920 population; qualification; salary [New].
- 1645b. County auditor's salary in counties of 42,100 to 42,500 [New].
- 1645c. Compensation of county auditors in counties of 49,010 to 49,100 population [New].

Art.

- 1645c-1. Compensation of county auditors in counties of 77,700 to 80,000 population [New].
- 1645d. Compensation of county auditors in counties of 39,100 to 39,200 population [New].
- 1645d-1. Compensation of county auditors in counties of 45,000 to 50,000 population [New].
- 1645d-2. Compensation of county auditors in counties of 49,100 to 51,000 population [New].
- 1645d-3. Compensation of county auditor in counties of 27,250 to 27,490 population [New].
- 1645e. Compensation of county auditors in counties of 190,000 to 200,000 population [New].
- 1645e-1. Compensation of county auditors in certain counties [New].
- 1645f. Additional duties of county auditors in counties of 190,000 to 200,000 population having city and county hospital [New].
- 1645g. Audits and reports respecting certain monies by county auditors in counties of 320,000 to 350,000 population [New].

## 2. COUNTY AUDITOR

## Art. 1645. 1460 Appointment and salary

In any county having a population of thirty-five thousand (35,000) inhabitants, or over, according to the preceding Federal Census, or having a tax valuation of Fifteen Million Dollars (\$15,000,000), or over, according to the last approved tax rolls, there shall be biennially appointed an Auditor of Accounts and Finances, the title of said officer to be County Auditor, who shall hold his office for two (2) years, and who shall receive as compensation for his services One Hundred and Twenty-five Dollars (\$125) for each million dollars, or major portion thereof on the assessed valuation, the annual salary to be computed from the last approved tax rolls; said annual salary from county funds shall not exceed Three Thousand, Six Hundred Dollars (\$3,600). Provided, that in all counties of not less than seven thousand, six hundred and eighty (7,680) inhabitants and not more than seven thousand, seven hundred (7,700) inhabitants according to the 1930 Federal Census, the Commissioners Courts thereof shall have the power to determine whether an auditor for such county is a public necessity in the dispatch of the county's business, and such Commissioners Court may enter an order so stating whether such county shall or shall not have such auditor, and if such Court determines that a necessity exists for such auditor, it may appoint such County Auditor, who shall qualify and perform all the duties required of a County Auditor in this State, and such Commissioners Court shall have the power to discontinue such office of County Auditor at any time that it shall determine that it is not a public necessity. Provided, that in all counties of not less than thirty-five thousand (35,000) nor

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

over thirty-seven thousand (37,000) inhabitants, according to the 1920 Federal Census, and in all counties of not less than forty-three thousand, five hundred (43,500) nor over forty-four thousand (44,000) inhabitants, according to the said 1920 Federal Census, the salary shall not be less than Two Thousand, Four Hundred Dollars (\$2,400) annually, said salary to be paid monthly out of the general revenue of the county upon an order of the Commissioners Court. Provided, further, that in counties having more than two hundred thousand (200,000) population and not more than three hundred thousand (300,000) population according to the last Federal Census where there is a city and county hospital to care for the city and county patients, and where a financial record for such hospital must be kept and reports made to the city and county, the auditor shall, in addition to the regular duties performed by him as required by law, keep such financial record of such hospital, and make such report to the executive bodies of the city and county, the Mayor and City Commissioners for the city, and the County Judge and County Commissioners for the county, and shall receive for such additional services rendered in compiling the necessary reports and records, and keeping such financial record, an additional sum of One Thousand, Two Hundred Dollars (\$1,200) per annum payable monthly, out of the fund created for said hospital. In all counties having a population of not less than twenty-nine thousand, four hundred (29,400) nor more than twenty-nine thousand, five hundred (29,500), the County Auditor shall receive not to exceed Eighteen Hundred Dollars (\$1800) per year. As amended Acts 1937, 46th Leg., 1st C.S., p. 1826, ch. 45, § 3; Acts 1939, 46th Leg., Spec. L., p. 595, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Sec. 2. of the Act provided: "If any section, sentence or any part whatever of this Act should be held to be unconstitutional or invalid, the same shall not affect the remaining portion of this Act and it is hereby declared that the Legislature would

have passed that part which is constitutional and valid."

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

Purported amendments of this article, see articles 1645a, 1645a—1, 1645b, post.

#### Art. 1645a. County auditors in counties of 19,150 to 19,175, inhabitants

In any county having a population of not less than nineteen thousand, one hundred and fifty (19,150) nor more than nineteen thousand, one hundred and seventy-five (19,175) according to the last preceding Federal Census, there shall be biennially appointed an auditor of accounts and finances, the title of said officer to be 'County Auditor,' who shall hold his office for two (2) years and who shall receive as compensation for his services the sum of Eighteen Hundred Dollars (\$1800) per annum payable in equal monthly installments out of the General Fund of the county upon order of the Commissioners Court. [As added Acts 1937, 45th Leg., p. 606, ch. 305, § 1.]

Effective May 10, 1937.

Section 2 of this act declared an emergency and provided that the act should take effect from and after its passage.

Another Article 1645a was added by

Acts 1937, 45th Leg., p. 639, ch. 313, § 1, but such article is designated as 1645a-1 for the purpose of clarity.

#### Art. 1645a—1. County auditors in certain counties to act as purchasing agents; compensation; auditors for school districts

That in all counties having a population of not less than twenty-four thousand, one hundred and twenty-five (24,125) nor more than

twenty-four thousand, one hundred and fifty (24,150), according to the last preceding Federal Census, and employing a County Auditor, said County Auditor, in addition to the regular duties performed by him as required by law, shall act as Purchasing Agent for the county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent the sum of Six Hundred Dollars (\$600) annually, payable in twelve (12) equal monthly installments, such compensation to be in addition to that allowed by law for such Auditor, and to be payable out of the General Revenue of such county. Provided that in all counties having a population of not less than forty-three thousand (43,000) and not more than forty-three thousand, one hundred (43,100) according to the last preceding Federal Census, and employing a County Auditor, said County Auditor, in addition to the regular duties performed by him as required by law, shall act as Purchasing Agent for the county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent the sum of Six Hundred Dollars (\$600) annually, payable in twelve (12) equal monthly installments, such compensation to be in addition to that allowed by law for such Auditor, and to be payable out of the General Revenue of such county. Provided, further, that in all counties having a population in excess of sixty-five thousand (65,000) inhabitants according to the last preceding Federal Census, and having a tax valuation of not more than Forty Million Dollars (\$40,000,000), according to the last approved tax rolls, and containing at least two incorporated cities of more than thirteen thousand, five hundred (13,500) population each, according to the last preceding Federal Census, such Auditor shall, in addition to his regular duties as Auditor, constitute the Purchasing Agent of such county when so directed by order of the Commissioners Court of such county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent a sum not to exceed Nine Hundred Dollars (\$900) annually, payable in twelve (12) equal monthly installments, and such compensation shall be in addition to that allowed by law for such Auditor, and payable out of the General Revenue of such county. As added Acts 1937, 45th Leg., p. 639, ch. 313, § 1; amended Acts 1939, 46th Leg., Spec.L., p. 600, § 1.

Effective May 25, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

The Act of 1937, cited to the text, purported to amend article 1645, ante, by

"adding a section to be known as Article 1645a," as set out in this article. In view of fact that the Legislature had already designated a new section as article 1645a, the text of this amendment is designated as article 1645a-1. See note to article 1645a, ante.

**Art. 1645a—2. County auditor's office in counties of 28,700 to 29,000 abolished; county auditors in counties of 27,545 to 27,555 population**

Section 1. No county having a population of not less than twenty-eight thousand seven hundred (28,700), nor more than twenty-nine thousand (29,000), according to the last preceding, or any future Federal Census, shall have a county auditor, and the office of county auditor is hereby abolished, in any and all such counties, and the duties of the office of county auditor, in any such counties, shall be performed by such other officers of the county, as may be provided by General Law.

Sec. 1-a. In any county having a population of not less than twenty-seven thousand five hundred forty-five (27,545), nor more than twenty-seven thousand five hundred fifty-five (27,555), according to the last preceding Federal Census, there shall be biennially appointed an auditor



of accounts and finances, the title of said officer to be 'County Auditor,' who shall hold his office for two (2) years and who shall receive as compensation for his services not less than Eighteen Hundred (\$1800.00) Dollars nor more than Twenty-four Hundred (\$2400.00) Dollars per annum payable in equal monthly installments out of the General Fund of the county upon order of the Commissioners' Court. [Acts 1937, 45th Leg., 1st C.S., p. 1778, ch. 17.]

Effective July 6, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that no county having a population of not less than twenty-eight thousand seven hundred (28,700), nor more than twenty-nine thousand (29,000), according to the last preceding, or future Federal Census, shall have a county audi-

tor; abolishing the office of county auditor in any such county; providing that any county having a population of not less than twenty-seven thousand five hundred forty-five (27,545), nor more than twenty-seven thousand five hundred fifty-five (27,555), shall have a county auditor and providing for compensation thereof; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1778, ch. 17].

**Art. 1645a—3. Appointment of county auditors in counties of 20,100 to 20,150 population and less than \$15,000,000 tax valuation**

Section 1. In any county having a population of not less than twenty thousand, one hundred (20,100) nor more than twenty thousand, one hundred and fifty (20,150), according to the last preceding Federal Census, and having a tax valuation of less than Fifteen Million Dollars (\$15,000,000), according to the last approved tax roll, if the Commissioners Court of such county shall determine that an auditor is a public necessity in the dispatch of the business of the county, such Commissioners Court may enter an order so stating and may appoint an auditor of accounts and finances, the title of said office to be "County Auditor," who shall qualify and perform all the duties required of County Auditors in this State, and who shall receive as compensation for his services a salary not to exceed Eighteen Hundred Dollars (\$1800) annually; said salary to be set by the Commissioners Court and to be paid monthly out of the General Revenue of the county upon order of the Commissioners Court; provided the Commissioners Court may by its order discontinue such office at any time it may find such office is not a public necessity. [Acts 1937, 45th Leg., 2nd C.S., p. 1951, ch. 50, § 1.]

Effective Nov. 3, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that a County Auditor may be appointed in any county having a population of not less than twenty thousand, one hundred (20,100) nor more than twenty thousand, one hundred and fifty (20,150), according to the last preceding

Federal Census, and having a taxable value of less than Fifteen Million Dollars (\$15,000,000), according to the last approved tax roll; providing that Commissioners Court in such county may by order determine the necessity for such office as well as by order may discontinue such office; providing compensation and the fund from which it shall be paid; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1951, ch. 50.]

**Art. 1645a—4. Salary of Auditor in certain counties**

In all Counties containing a population of not less than fifty-one thousand seven hundred seventy-nine (51,779), nor more than fifty-two thousand (52,000) according to the last preceding Federal Census, the County Auditor shall receive a salary of not more than Four Thousand (\$4,000.00) Dollars per annum, payable in equal monthly install-

ments upon order of the Commissioners' Court. Added Acts 1939, 46th Leg., Spec.L., p. 598, § 1.

Effective May 17, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act to fix the salary of County Audi-

tors in all Counties having not less than fifty-one thousand seven hundred seventy-nine (51,779) inhabitants and not over fifty-two thousand (52,000) inhabitants according to the last preceding Federal Census; repealing all laws in conflict herewith, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 598.

#### Art. 1645a—5. Auditors in counties of 30,000 to 30,050

In every county in this State having a population of not less than thirty thousand (30,000) and not more than thirty thousand and fifty (30,050), according to the last preceding Federal Census, the District Judge having jurisdiction in such county shall, if such reason be good and sufficient, appoint a County Auditor as provided in Article 1646, of the Revised Civil Statutes of Texas, of 1925, and said Auditor shall receive a salary of Twenty-Seven Hundred Dollars (\$2700) per year, which salary is hereby fixed, and same shall be paid in the same manner as other county officers are paid in said counties. Acts 1939, 46th Leg., Spec.L., p. 594, § 1.

Effective May 17, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing for and fixing compensation for County Auditors in certain counties; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 594.

#### Art. 1645a—6. County auditors in counties of 14,850 to 14,920 population; qualification; salary

Section 1. That from and after the effective date of this Act in all counties in this State having a population of not less than fourteen thousand, eight hundred and fifty (14,850), and not more than fourteen thousand, nine hundred and twenty (14,920), according to the last preceding Federal Census, or any subsequent Federal Census, the Commissioners Court in such counties, if they shall determine that an Auditor is a public necessity in the dispatch of the county business, and shall enter an order upon the minutes of said Court, fully setting out the reasons and necessities for such Auditor, and shall cause said order to be certified to the District Judge having jurisdiction in the counties hereinabove set out, said Judge shall, if such reasons be considered good and sufficient, appoint a County Auditor as provided in Article 1647 of the Revised Civil Statutes of Texas of 1925, and upon the appointment by said Judge of such Auditor, such Auditor shall qualify by taking the oath of office and giving the bond as now provided in Article 1649 of the Revised Civil Statutes of Texas of 1925.

Sec. 2. When the Auditor, as hereinabove provided, shall have qualified by taking the oath and giving the bond, as provided in Section 1 hereof, he shall be authorized to perform all the duties now required of Auditors generally in counties of this State, as provided in Title 34 of the Revised Civil Statutes of Texas, 1925, and amendments thereto not in conflict herewith, and shall receive a salary not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, said salary to be paid in equal monthly installments and shall be paid from the County General Fund, of such counties, the Jury Fund, the Road and Bridge Fund, the Permanent Improvement Fund, in proportion and on the percentage of levies made for each respective Fund, and in proportion that such levies bear to the total salary of such Auditor.

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Sec. 3. This Act shall be deemed cumulative of all general provisions now authorizing the employment of Auditors, and it is not intended by this Act to repeal any law, or parts of law, not in conflict herewith. Acts 1939, 46th Leg., Spec.L., p. 591.

Effective April 27, 1939.

Section 4 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for County Auditor in all counties having a population of not less than fourteen thousand, eight hundred and fifty (14,850), and not more than fourteen

thousand, nine hundred and twenty (14,920), according to the last preceding Federal Census, or any subsequent Federal Census; prescribing duties of said Auditor; providing salary for such Auditor; prescribing mode and manner of payment of such salary; making the Act cumulative; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 591.

**Art. 1645b. County auditor's salary in counties of 42,100 to 42,500**

In all counties containing a population of not less than forty-two thousand, one hundred (42,100) nor more than forty-two thousand, five hundred (42,500) according to the Federal Census of 1930, the County Auditor shall receive a salary not less than Three Thousand, Six Hundred (\$3,600) per annum, payable in equal monthly installments upon order of the Commissioners Court. Acts 1937, 45th Leg., p. 158, ch. 84, § 1.

Effective April 1, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

The Act of 1937, cited to the text, purported to amend Article 1645, ante, by "adding a section to be known as Article 1645b" as set out in this article.

**Art. 1645c. Compensation of county auditors in counties of 49,010 to 49,100 population**

In every county in this State having a population of not less than forty-nine thousand, ten (49,010) nor more than forty-nine thousand, one hundred (49,100) inhabitants according to the last preceding United States Census, the compensation of each County Auditor shall be Three Thousand Dollars (\$3,000) per annum to be paid in equal monthly installments out of funds of said county. Acts 1937, 45th Leg., p. 852, ch. 420, § 1.

Effective May 28, 1937.

See article 1645c—1, and note thereunder.

Section 2 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act fixing the compensation of County Auditors in every county having a

population of not less than forty-nine thousand, ten (49,010) nor more than forty-nine thousand, one hundred (49,100) inhabitants according to the last preceding United States Census and prescribing how the same shall be paid; repealing all laws in conflict herewith; and declaring an emergency. [Acts 1937, 45th Leg., p. 852, ch. 420.]

**Art. 1645c—1. Compensation of county auditors in counties of 77,700 to 131,000 population**

In all counties of this State having a population of not less than seventy-seven thousand six hundred (77,600) inhabitants nor more than one hundred thirty-one thousand (131,000) inhabitants, according to the last Federal Census, as same now exists or may hereafter exist, and having an assessed valuation of not less than Forty-five Million and One Dollars (\$45,000,001.00) nor more than Sixty-three Million Five Hundred Thousand Dollars (\$63,500,000.00), according to the last approved tax rolls, as same now exists or may hereafter exist, the County Auditor shall receive an annual salary from county funds of Forty-two Hundred Dollars (\$4200.00) to be paid in equal monthly installments out

of the general revenues of the county. Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 4, as amended Acts 1939, 46th Leg., Spec.L., p. 599, § 1.

Effective June 1, 1939.

Section 2 of the amendatory act of 1939 reads as follow: "If any section, clause, sentence, or other part of this Act shall for any reason be declared unconstitutional that shall not affect in any way the constitutionality of the remaining provisions hereof."

Section 3 repeals all conflicting laws and parts of laws; section 4 declared an emer-

gency and provided that the Act should take effect from and after its passage.

The Act of 1937, purported to amend article 1645, by "adding a section thereto to be known as Article 1645c." As there is already another article designated by such number (Acts 1937, 45th Leg., p. 852, ch. 420, § 1) the Act of 1937 appears herein as art. 1645c—1.

#### Art. 1645d. Compensation of county auditors in counties of 39,100 to 39,200 population

In all counties in this State having a population of not less than thirty-nine thousand, one hundred (39,100), nor more than thirty-nine thousand, two hundred (39,200), according to the last preceding United States Census, the County Auditor shall receive a salary of Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in twelve (12) equal monthly installments out of the General Funds of said county. [Acts 1937, 45th Leg., 2nd C.S., p. 1908, ch. 29, § 1.]

Effective Nov. 3, 1937.

Section 2 repeals all conflicting laws and parts of laws; section 3 declared an emer-

gency and provided that the Act should take effect from and after its passage.

#### Art. 1645d—1. Compensation of county auditors in counties of 45,000 to 50,000 population

In all counties in this State having a population of not less than forty-five thousand (45,000) inhabitants nor more than fifty thousand (50,000) inhabitants, according to the last Federal Census, as same now exists or may hereafter exist, the County Auditor shall receive an annual salary from county funds of Four Thousand Dollars (\$4000) to be paid in equal monthly installments out of the general revenues of the county. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 5.]

Effective July 7, 1937.

Emergency section. See note under article 1645e, post.

#### Art. 1645d—2. Compensation of county auditors in counties of 49,100 to 51,000 population

In all Counties in this State having a population of not less than forty-nine thousand one hundred (49,100) and not more than fifty-one thousand (51,000) inhabitants according to the 1930 Census of the United States, the County Auditor shall receive a salary of Four Thousand (\$4,000.00) Dollars per annum, to be paid in equal monthly installments out of the General Revenues of the County. Added Acts 1939, 46th Leg., Spec.L., p. 597, § 1.

Effective April 27, 1939.

Section 2 of the act of 1939 declared an

emergency and provided that the act should take effect from and after its passage.

#### Art. 1645d—3. Compensation of county auditor in counties of 27,250 to 27,490 population

That from and after the effective date of this Act in all counties having a population according to the last Federal Census of not less than twenty-seven thousand, two hundred and fifty (27,250) and not more than twenty-seven thousand, four hundred and ninety (27,490), the Coun-

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ty Auditor of such counties shall receive an annual salary of Two Thousand, Four Hundred Dollars (\$2,400) to be paid in twelve (12) equal monthly installments out of the general fund of such counties. Acts 1939, 46th Leg., Spec.L., p. 593, § 1.

Filed without Governor's signature June 1, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for compensation for County Auditor in certain counties; providing mode and manner of payment of such salary; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 593.

### Article 1645e. Compensation of county auditors in counties of 190,000 to 200,000 population

In every county in this State having a population of not less than one hundred and ninety thousand (190,000) nor more than two hundred thousand (200,000) inhabitants according to the last preceding United States Census, the compensation of each County Auditor shall be Forty-eight Hundred Dollars (\$4800) per annum to be paid in equal monthly installments out of funds of said county. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 1.]

Effective July 7, 1937.

Section 2 of Act 1937 cited to the text is published as art. 1645f, section 3 as art. 1645g, section 4 as 1645c—1, section 5 as 1645d—1. Section 6 repeals all conflicting laws and parts of laws. Section 7 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act fixing the compensation of County Auditors in every county having a population of not less than one hundred and ninety thousand (190,000) nor more than two hundred thousand (200,000) inhabitants according to the last preceding United States Census and prescribing how the same shall be paid; providing that in such counties where there is a city and county hospital that the County Auditor shall audit the books and records of such hospital and shall make reports to the county and city governments covering the operation of such hospital and fixing the compensation therefor and prescribing how the same shall be paid; authorizing, empowering and directing all County Audi-

tors in counties having a population of more than three hundred and twenty thousand (320,000) and less than three hundred and fifty thousand (350,000) persons, according to the last preceding Federal Census or any future Federal Census, to make a complete audit of any and all monies, property or funds of whatsoever kind or character received, expended or disposed of in any manner by the Superintendent of Public Instruction, the County Board of Trustees and/or County Superintendent of Schools in any such county, and providing that a copy of the auditor's report shall be filed with the Commissioners Court and with the County or District Attorney at the end of each fiscal year; amending Article 1645 of the Revised Civil Statutes of Texas of 1925, as amended by Chapter 15, Acts of the Forty-second Legislature, Second Called Session, by adding thereto two new sections to be known as Article 1645C and Article 1645D; repealing all laws in conflict herewith; and declaring an emergency. Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24.

### Art. 1645e—1. Compensation of county auditors in certain counties

That in every county in this State having a population of less than thirty-three thousand (33,000), according to the last preceding Federal Census, and having assessed property valuation of more than Eighty Million Dollars (\$80,000,000), according to the last approved tax rolls, the compensation of each County Auditor shall not exceed Four Thousand, Two Hundred Dollars (\$4,200); and in every county in this State having a population of not less than thirty-four thousand, one hundred and forty-five (34,145), nor more than thirty-four thousand, one hundred and sixty (34,160), according to the last preceding Federal Census, the County Auditor shall not receive more than Three Thousand Dollars (\$3,000) per year; that in every county in this State having a population of not less than forty-six thousand, one hundred and seventy-nine (46,179), nor more than forty-nine thousand, and twen-

ty (49,020), according to the last preceding Federal Census, the compensation of each County Auditor shall be Three Thousand Dollars (\$3,000) per annum; and providing that in counties having a population of not less than forty-eight thousand, six hundred (48,600), nor more than forty-nine thousand (49,000), according to the last preceding Federal Census, the compensation of each County Auditor shall be Three Thousand, Six Hundred Dollars (\$3,600); such salaries to be payable in equal monthly installments. [Acts 1937, 45th Leg., 2nd C.S., p. 1902, ch. 25, § 1.]

Effective Oct. 25, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act fixing the compensation of County Auditors in certain counties; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1902, ch. 25.]

**Art. 1645f. Additional duties of county auditors in counties of 190,000 to 200,000 population having city and county hospital**

That in counties having more than one hundred and ninety thousand (190,000) and not more than two hundred thousand (200,000) inhabitants according to the last Federal Census where there is a city and county hospital to care for the city and county patients, and where a financial record for such hospital must be kept and reports made to the city and county, the Auditor shall, in addition to the regular duties performed by him as required by law, keep such financial record of such hospital, and make such report to the executive bodies of the city and county, the Mayor and City Councilmen for the city, and the County Judge and County Commissioners for the county. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 2.]

Effective July 7, 1937.

Emergency section. See note under article 1645e, ante.

**Art. 1645g. Audits and reports respecting certain monies by county auditors in counties of 320,000 to 350,000 population**

All County Auditors in counties having a population of more than three hundred and twenty thousand (320,000) and less than three hundred and fifty thousand (350,000) persons by the last preceding Federal Census or any future Federal Census are hereby authorized, empowered and directed to make a complete audit of any and all monies, property or funds of whatsoever kind or character received, expended or disposed of in any manner by the Superintendent of Public Instruction, the County Board of Trustees and/or County Superintendent of Schools in any such county. A copy of the auditor's report shall be filed with the Commissioners Court and with the County or District Attorney at the end of each fiscal year. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 3.]

Effective July 7, 1937.

Emergency section. See note under article 1645e, ante.

**Art. 1666. Budget**

Acts 1939, 46th Leg., p. 154, § 1, effective May 18, 1939, reads as follows:

"The County Auditor in all counties having a population in excess of three hundred and fifty thousand (350,000) as shown by the last preceding or any future United States Census shall serve as the budget officer for the Commissioners Court in each county, and on or immediately after January 1st of each year he shall prepare a budget

to cover all proposed expenditures of the county government for the current fiscal and calendar year. Such budget shall be carefully itemized so as to make possible as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget shall be so prepared as to show with reasonable accuracy each of the various

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projects for which appropriations are set up in the budget, and the estimated amount of money carried in the budget for each of such projects. The budget shall contain a complete financial statement of the county, showing all outstanding obligations of the county, the cash on hand to the credit of every and each fund of the county government, the funds received from all sources during the previous year, the funds and revenue estimated by the Auditor to be received from all sources during the previous year, the funds and revenue estimated by the Auditor to be received from all sources during the ensuing year, together with a statement of all accounts and contracts on which sums are due to or by the county as of December 31st of the year preceding, except taxes and Court costs. Until a budget has been adopted by the Commissioners Court no payments shall be made during the current year except for emergencies and for obligations legally incurred prior to January 1st of such year for salaries, utilities, materials, and supplies. A copy of the budget shall be filed with the Clerk of the County Court, and it shall be available for inspection by the taxpayer.

"The Commissioners Court in each county shall provide for a public hearing on the county budget, which hearing shall take place on some date to be named by the Commissioners Court within seven (7) calendar days after the filing of the budget and prior to January 31st of the current year. Public notice shall be given that on the date of said hearing the budget as prepared by the County Auditor will be considered by the Commissioners Court. Said notice shall name the hour, the date, and the place the hearing shall be conducted, and shall be published once in a newspaper of general circulation in said county. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the County Auditor shall be acted upon by the Commissioners Court. The Court shall have authority to make such changes in the budget as in its judgment the facts and the law warrant and the interest of the taxpayers demand, provided the amounts budgeted for current expenditures from the various funds of the county shall not exceed the balances in said funds as of January 1st plus the anticipated revenue for the current year for which the budget is made, as estimated by the County Auditor. Upon final approval of the budget by the Commissioners Court, a copy of such budget as approved shall be filed with the County Auditor, the Clerk of the Court, and the State Auditor, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with said budget. Said Court may upon proper application transfer an existing budget surplus during the year to a budget of like kind and fund, but no such transfer shall increase the total of the budget.

"In like manner when any bond issue of the county is submitted at an election or anticipation warrants are to be issued against future revenues and a tax levied for said warrants a budget of proposed expenditures shall be adopted and upon the receipt of the proceeds of the sale of any bonds or warrants expenditures shall be made therefrom in the manner hereinafter provided for expenditures for general purposes.

"Upon the adoption of any general or special budget as hereinbefore provided and its certification, the County Auditor of each county thereupon shall open an appropriation account for each main budgeted or special item therein and it shall be his duty to charge all purchase orders or requisitions, contracts, and salary and labor allowances to said appropriations. Requisitions issued or contracts entered into conformably to the laws of the State of Texas by proper authority for work, labor, services, or materials and supplies shall nevertheless not become effective and binding unless and until there has been issued in connection with such item the certificate of said County Auditor that ample budget provision has been made in the budget therefor and funds are, or will be, on hand to pay the obligation of the county or officer when due. The amount set aside in any budget for any purchase order or requisition, contract, special purpose, or salary and labor account shall not be available for allocation for any other purpose unless an unexpected balance remains in the account after full discharge of the obligation or unless the requisition, contract, or allocation has been cancelled in writing by the Commissioners Court or county officer for a valid reason.

"The County Auditor shall make to the Commissioners Court not less than monthly a complete report showing the financial condition of the county. Said report shall be in such form as may be prescribed by said County Auditor and shall set forth all facts of interest concerning the financial condition of the county and shall contain a consolidated balance sheet. The report shall contain a complete statement of the balances on hand at the beginning and close of the month and the aggregate receipts to and aggregate disbursements from each fund, the transfers to and from each fund, the bonded and warrant indebtedness with the rates of interest due thereon, a summarized budget statement showing for each officer, department, or institution budgeted the expenses paid from the budget during the month and for the period of the fiscal year inclusive of the month for which said report is made, also the encumbrances against said budgets, and the amounts available for further expenditures, together with such other information as such officer may deem necessary to reflect the true condition of the finances of such county or the Commissioners Court thereof may require. The County Auditor shall publish once in a daily newspaper published in said county a condensed copy of

said report showing the condition of funds and budgets together with such recommendations as he may deem desirable.

"In the preparation of the budget, the County Auditor shall have authority to require of any district, county, or precinct officer of the county such information as may

be necessary to properly prepare the budget."

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 1667. Improvement district finances

In all counties which have or may have a county auditor and containing a population of one hundred and ten thousand (110,000) or more, as shown by the preceding Federal Census, and in all counties having a population of not less than forty thousand, five hundred (40,500) nor more than forty-one thousand (41,000), according to the last Federal Census, and in which counties there exists or in which there may be created any improvement, navigation, drainage, or road or irrigation district, or any other character of district having for its purpose the expenditure of public funds for improvement purposes, or for improvements of any kind whether derived from the issuance of bonds or through any character of special assessment, the county auditor shall exercise such control over the finances of said district as hereinafter provided. As amended Acts 1939, 46th Leg., Spec.L., p. 610, § 1.

Effective April 18, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that

the Act should take effect from and after its passage.

#### Art. 1672. [Repealed by Acts 1935, 44th Leg., p. 316, ch. 119, § 2 insofar as same relates to Navigation District having cities of 100,000 or more.]

Article 3912e-2, paragraph (g) provides that it shall not be construed nor shall it operate to repeal this article.



## TITLE 35—COUNTY LIBRARIES

### 2. LAW LIBRARY

Art.	1702b.	Art.	1702c.
			quirements; County Law Library Fund [New].
1702b.	County law libraries in certain counties [New].	1702b—2.	County law libraries in counties of 50,000 to 78,000; County Law Library Fund [New].
1702b—1.	County law libraries in counties of 11,800 to 12,500 population and fulfilling certain other re-	1702c.	Law libraries in certain counties [New].

### 2. LAW LIBRARY

#### Art. 1702b. County law libraries in certain counties

Section 1. For the purpose of establishing "County Law Libraries" there shall be taxed, collected, and paid as other costs the sum of One Dollar (\$1) in each case, Civil or Criminal, except suit for delinquent taxes, hereafter filed in every county and/or District Court, Civil or Criminal, in each county now or hereafter having three (3) or more District Courts, one of which sits and has jurisdiction in not less than two (2) other counties and none of which have more than four (4) terms a year; provided, however, that in no event shall the county be liable for said costs in any Civil or Criminal case, such costs shall be collected by the Clerk of the respective Courts in said counties and when collected, shall be paid by him to the County Treasurer to be kept by him in a separate fund to be known as the "County Law Library Fund"; such funds shall be administered by the Commissioners Court for the purchase and maintenance of a law library and the furniture and equipment necessary thereto in a place convenient and accessible to the Judges and litigants of such counties and for the payment of a salary to a librarian to be appointed by the Commissioners Court; provided, however, that said counties shall not use the funds collected under the provisions of this Act for any other purposes except the purposes above indicated. The Commissioners Court of counties affected by this Act shall make rules for the use of books in said library and provide space for housing same.

The salary of the custodian or librarian herein provided for shall be fixed by the Commissioners Court and shall be paid out of the funds collected under this Act.

Sec. 2. This Act shall not have the effect of repealing or modifying any Act now in force respecting the establishment and maintenance of County Law Libraries in any county in this State but such Acts shall remain in full force and effect as to counties affected thereby. [Acts 1937, 45th Leg., p. 602, ch. 303.]

Effective May 10, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act establishing a County Law Library in counties in this State having three or more District Courts sitting for all of its terms or some of its terms, with both Civil and Criminal Jurisdiction, none of which have more than four (4) terms a year and one of which sits and has jurisdiction in not less than two (2) other counties; providing a fund to be administered by the

Commissioners Court to be raised by collecting One Dollar (\$1) as costs in each case filed in any of said Courts in said county except delinquent tax suits and including all Civil and Criminal County Courts or District Courts; providing, however, that the county shall in no event be liable for any cost in any civil or criminal case; providing for a custodian or librarian and his salary; providing for housing and management; providing this Act shall not affect any other law now in effect with respect to any other county, and declaring an emergency. [Acts 1937, 45th Leg., p. 602, ch. 303.]

**Art. 1702b—1. County law libraries in counties of 11,300 to 12,500 population and fulfilling certain other requirements; County Law Library Fund**

For the purpose of establishing "County Law Libraries" there shall be taxed, collected, and paid as other costs in the sum of One Dollar (\$1) in each case, civil or criminal, except suits for delinquent taxes hereafter filed in every County and/or District Court in each county now having an area of not less than one thousand, one hundred and thirty (1,130) and not more than one thousand, five hundred (1,500) square miles, and with a population according to the last Federal Census of not less than eleven thousand, three hundred (11,300) and not more than twelve thousand, five hundred (12,500), and whose county seat is in a city of not less than two thousand, two hundred (2,200) and not more than three thousand (3,000) according to the last Federal Census; providing, however, that in no event shall the County be liable for said cost in any civil or criminal case. Such cost shall be collected by the Clerk of the respective Courts in said county, and when collected shall be paid by him to the County Treasurer to be kept by him in a separate fund to be known as the "County Law Library Fund." Such funds shall be administered by the Commissioners Court for the purchase and/or maintenance of a law library, and the furniture and equipment necessary thereto, the same to be placed in convenient and accessible quarters for the use of Judges and litigants of such counties.

For the purpose of protecting said libraries as hereinabove set out, the Commissioners Court may provide if necessary for a custodian or librarian appointed by said Commissioners Court, and may fix salaries therefor, providing, however, that the counties come under the provisions of this Act and shall not use the funds collected for any other purposes except the purposes above set out.

The Commissioners Court of counties affected by this Act shall make rules for the use of books in said libraries and provide space for housing the same. The salaries for custodian or librarian here provided for shall be fixed by the Commissioners Court and be paid out of the funds collected under this Act. Acts 1939, 46th Leg., Spec.L., p. 614, § 1.

Effective April 18, 1939.

Section 2 of the Act of 1939, reads as follows: "This Act shall not have the effect of repealing or modifying any Act now in force regarding the establishment and/or maintenance of county libraries in any county in this State, but such Acts shall remain in full force and effect as to counties affected thereby."

Section 3 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act establishing a County Law Library in each county in this State having an area of not less than one thousand, one hundred and thirty (1,130) and not more than one thousand, five hundred (1,500) square miles, and with a population according to the last Federal Census of not less than eleven thousand, three hundred (11,300) and not more than twelve thousand, five hundred (12,500), and whose

county seat is in a city having a population of not less than two thousand, two hundred (2,200) and not more than three thousand (3,000) according to the last Federal Census; providing a fund to be administered by the Commissioners Court of such counties, and to be raised by collecting One Dollar (\$1) as cost in each case filed in the District and County Courts of such counties, except such fee shall not be collected or charged in delinquent tax suits, but shall include all civil and criminal cases filed on the dockets of the respective Courts as hereinabove set out; providing however, that the County shall in no event be liable for any cost in any civil or criminal case; providing for a custodian, a librarian and salaries therefor; providing for housing and management; providing this Act shall not affect any other law now in effect with respect to any other county; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 614.

Art. 1702b—2. County law libraries in counties of 50,000 to 78,000;  
County Law Library Fund

Section 1. The Commissioners Courts of all counties within this State, having a population of not less than fifty thousand (50,000) inhabitants nor more than seventy-eight thousand (78,000) inhabitants, according to the last preceding Federal Census, and in which there is located no Court of Civil Appeals, shall have the power and authority, by first entering an order for that purpose, to provide for, maintain and establish a county law library.

Sec. 2. For the purpose of establishing "County Law Libraries" after the entry of such order, there shall be taxed, collected, and paid as other costs the sum of One Dollar (\$1) in each case, civil or criminal, except suits for delinquent taxes, hereafter filed in every County or District Court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the Clerks of the respective Courts in said counties and paid by said Clerk to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall be administered by said Courts for the purchase and maintenance of a law library in a convenient and accessible place, and said fund shall not be used for any other purpose.

Sec. 3. Said Courts are granted all necessary power and authority to make this Act effective, to make reasonable rules in regard to said library and the use of the books thereof, and to carry out the terms and provisions of this Act. Acts 1939, 46th Leg., Spec.L., p. 612.

Effective June 5, 1939.

Section 4 of the Act of 1939, reads as follows: "This Act shall not have the effect of repealing or modifying any existing law in regard to county law libraries; but such Acts shall remain in full force and effect as to all counties affected thereby; and this Act shall be cumulative."

Section 5 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that all counties within this State, having a population of not less

than fifty thousand (50,000) inhabitants nor more than seventy-eight thousand (78,000) inhabitants, according to the last preceding Federal Census, and in which there is located no Court of Civil Appeals, may, upon an order being made by their Commissioners Courts for this purpose, provide for and maintain a county law library; providing for the funds for said library; granting to said Courts all necessary power and authority to make this Act effective; providing that said Act shall be cumulative; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 612.

Art. 1702c. Law libraries in certain counties

Section 1. The Commissioners' Court of all counties within this State, where said counties contain in excess of fifty-three thousand five hundred (53,500) and less than fifty-seven thousand (57,000) inhabitants shall have the power and the authority by an order for that purpose to provide for, maintain and establish a County Law Library.

Sec. 2. Said library shall be established and maintained by a trial fee which shall be assessed and collected as a part of the court costs in all cases filed in the County or District Courts in such counties and said trial fee which may not exceed One (\$1.00) Dollar in any case, shall be provided for by an order of the said Court, the amount of same shall be fixed by the said Court and an order to such effect be spread upon the Commissioners' Court Minutes in said Counties.

Sec. 3. Said Commissioners' Court is granted all necessary power and authority to make this Act effective and to carry out the terms and provisions hereof. Acts 1939, 46th Leg., Spec.L., p. 611.

Effective May 15, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the Act

should take effect from and after its passage.

**Title of Act:**

An Act providing that all counties within this State having a population in excess of fifty-three thousand five hundred (53,500) inhabitants and less than fifty-seven thousand (57,000) inhabitants may upon an order made by its Commissioners' Court for this purpose provide and maintain a County Law Library; and that such Library may upon an order made by said Commissioners' Court be maintained and

supported by a trial fee to be assessed and collected in all cases filed in the County and District Courts of said Counties, said fee not to exceed the sum of One (\$1.00) Dollar for each case filed and granting to said Commissioners' Court the power and authority to establish and maintain said Law Library as a County Library at the county seat of said counties; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 611.

## TITLE 37—COURT—SUPREME

### CHAPTER THREE—TERMS AND JURISDICTION

Art.

1731a. Rules of practice; power of Supreme Court in civil judicial proceedings [New].

Art. 1731a. Rules of practice; power of Supreme Court in civil judicial proceedings

Section 1. In order to confer upon and relinquish to the Supreme Court of the State of Texas full rule-making power in civil judicial proceedings, all laws and parts of laws governing the practice and procedure in civil actions are hereby repealed, such repeal to be effective on and after September 1, 1941. Provided, however, that no substantive law or part thereof is hereby repealed.

#### Supreme Court to make rules for practice and procedure

Sec. 2. The Supreme Court is hereby invested with the full rule-making power in the practice and procedure in civil actions. Such rules shall not abridge, enlarge or modify the substantive rights of any litigant. Such rules, after promulgation by the Supreme Court, shall be filed with the Secretary of State and a copy thereof mailed to each elected member of the Legislature on or before December 1st immediately preceding the next Regular Session of the Legislature and shall be reported by the Secretary of State to the Legislature, and, unless disapproved by the Legislature, such rules shall become effective upon September 1, 1941; provided, however, the Supreme Court may, from time to time after September 1, 1941, promulgate any specific rule or rules or any amendment or amendments to any specific rule or rules and make the same effective, except as hereinafter provided, at such time as the Supreme Court may deem expedient in the interest of a proper administration of justice, the same to remain in effect unless and until disapproved by the Legislature. Any such specific rule or rules, or any such amendment or amendments to any specific rule or rules, shall be filed by the Clerk of the Supreme Court with the Secretary of State, and a copy thereof mailed by the said Clerk to each registered member of the State Bar of Texas, at least sixty (60) days before the effective date thereof, and reported by the Secretary of State to the next succeeding Regular Session of the Legislature in the same manner as hereinabove provided.

#### Supreme Court to file list of laws repealed by its rules

Sec. 3. At the time it files the rules, the Supreme Court shall file with the Secretary of State a list of all articles or sections of the General Laws of the State of Texas, and parts of articles and sections of such General Laws, which, in its judgment, are repealed by Section 1 of this Act. Such list giving the construction of the Supreme Court as to the General Laws and parts of laws repealed by Section 1 shall constitute, and have the same weight and effect, as any other decision of the Supreme Court.

#### Rules to be published with Supreme Court reports

Sec. 4. Such rules shall be published in the official reports of the Supreme Court; and the Supreme Court is authorized to adopt such

method as it may deem expedient for the printing and distributing of such rules.

**Severability of this Act**

Sec. 5. If any sentence, paragraph or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other sentence, paragraph or section hereof, and the Legislature hereby expressly declares that it would have passed such remaining sentences, paragraphs, and sections despite such invalidity. Acts 1939, 46th Leg., p. 201.

Effective May 15, 1939.

Section 6 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act conferring and relinquishing to the Supreme Court full rule-making power in civil judicial proceedings, repealing all laws and parts of laws governing practice and procedure in civil actions, such repeal effective on and after September 1, 1941, providing that no substantive law or part thereof is thereby repealed; investing the Supreme Court with full rule-making power and fixing September 1, 1941, as the time for such rules to become effective, unless disapproved by the Legislature; providing that such rules shall not abridge, enlarge or modify the substantive rights; providing for filing of such rules with the Secretary of State and report to the Legislature and its members; providing for promulgation of spe-

cific rules or amendments to rules by the Supreme Court after September 1, 1941; providing and limiting the time for such rules to become effective, unless disapproved by the Legislature, and further providing for filing of such rules with the Secretary of State and the mailing of a copy thereof to each registered member of the State Bar of Texas, and report to the Legislature; providing that the Supreme Court shall file with the Secretary of State a list of all articles or sections of the General Laws of the State, in its judgment, repealed by Section 1 of this Act, and further providing for the construction to be given such list; providing for publication of rules; providing that if any sentence, paragraph or section of this Act shall be held invalid or unconstitutional, that it should not invalidate any other portion of the Act, and the Legislature declares it would have passed such remaining sections despite such invalidity; and declaring an emergency. Acts 1939, 46th Leg., p. 201.

## TITLE 39—COURTS OF CIVIL APPEALS

## CHAPTER ONE—TERMS AND JURISDICTION

Art. 1813. [1581] [988] Election and term of office; Commissioner appointed in case of disability of justice

(a) The Justices of each Court of Civil Appeals shall be elected at the general election by the qualified voters of their respective districts. Upon their qualification, after the first election after the creation of any Court of Civil Appeals, the Justices shall draw lots for the terms of office; those drawing number one shall hold for the term of two (2) years; those drawing number two shall hold for a term of four (4) years, and those drawing number three shall hold office for six (6) years. Each of said offices shall be filled by election at the next general election before the respective terms expire; and the person elected shall thereafter hold his office for six (6) years.

(b) After any Justice of any Court of Civil Appeals has become totally disabled to discharge any of the duties of his office, by reason of illness, physical or mental, and has remained in such condition continuously for a period of not less than one year, and if it is probable that such illness will be permanent, and is of such a nature that it will probably continue to incapacitate such Justice for the balance of his term of office, it shall be the duty of the other two Justices of the Court of which such incapacitated Justice is a member to certify such facts to the Governor. Upon receipt of such certificate by the Governor he shall make proper investigation touching the matters therein contained, and, if he shall determine that the facts contained in such certificate are true and that a necessity exists therefor, he shall forthwith appoint a Special Commissioner having the requisite qualifications of a member of such Court to assist the same. Such Special Commissioner, when so appointed, may sit with such Court, hear arguments on submitted cases, and write opinions thereon if directed to do so by the Court, and said opinions, if adopted by the Court, shall become thereupon the opinions of the Court.

(c) The Commissioner herein provided for, when appointed by the Governor, shall receive the same compensation as the regular Justices of the Court of Civil Appeals, and he shall serve until the death or expiration of the term of the disabled member, provided in no event shall the term of service continue for a longer time than two (2) years under the same appointment, and provided further that in the event the disabled Justice shall recover from his disability the term of such Special Commissioner shall immediately end. In the event of such recovery two (2) Justices of said Court shall certify such fact to the Governor and such certificate shall be conclusive evidence of the recovery of said disabled Justice.

(d) Nothing in this Act shall be considered as giving any two (2) members of any Court of Civil Appeals or the Governor the power or authority to remove or suspend any member of the Court of Civil Appeals from office, or to in any manner interfere with him in his constitutional rights and powers. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2108, ch. 509, § 1; Acts 1937, 45th Leg., p. 297, ch. 154, § 1.

Amendment of 1937, effective April 14, 1937.

Section 2 of this Act reads as follows:  
"Sec. 2. If any part of this law shall be declared unconstitutional, it is hereby declared to be the intent of the Leg-

islature to pass all constitutional portions thereof notwithstanding."

Section 3 of the amendatory acts of 1937 declared an emergency making the act effective on and after its passage.

## CHAPTER THREE—PROCEEDINGS

## Art. 1839. 1608, 1015 Time to file transcript

In appeal or writ of error the appellant or plaintiff in error shall file the transcript and statement of facts with the Clerk of the Court of Civil Appeals within sixty (60) days from the final judgment or order overruling motion for new trial, or service of the writ of error; provided, by motion filed before, at, or within a reasonable time, not exceeding fifteen (15) days, after the expiration of such sixty-day period, showing good cause to have existed within such sixty-day period, why said transcript and statement of facts could not be so filed, the Court of Civil Appeals may permit the same to be thereafter filed upon such terms as it shall prescribe. As amended Acts 1939, 46th Leg., p. 58, § 1.

Section 2 of the amendatory act of 1939 makes it effective January 1, 1940.

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

## CHAPTER EIGHT—WRIT OF ERROR TO SUPREME COURT

Art.

1883a. Party participating in actual trial; writ of error review by Court of Civil Appeals [New].

## Art. 1883a. Party participating in actual trial; writ of error review by Court of Civil appeals

No party who participates either in person or by his attorney in the actual trial of the case in the trial court shall be entitled to review by the Court of Civil Appeals through means of writ of error. Acts 1939, 46th Leg., p. 59, § 1.

Effective January 1, 1940.

Section 2 of the act of 1939 read as follows: "All laws and parts of laws, insofar as they conflict with this Act, are repealed. Writ of error shall continue to be available under the rules and regulations of the law to a party who does not participate in the trial of the case in the trial court." Section 3 makes it effective Jan. 1, 1940 and section 4 declared an emergency.

Title of Act:

An Act providing that no party who participates either in person or by his attorney

in the actual trial of the case in the trial court shall be entitled to review by the Court of Civil Appeals through means of writ of error; providing for a repeal of all laws and parts of laws insofar as they conflict with this Act or repeal; providing that writ of error shall continue to be available under the rules and regulations of the law, to a party who does not participate in the trial of the case in the trial court; providing for the effective date of this Act, and declaring an emergency. Acts 1939, 46th Leg., p. 59.



## TITLE 40—COURTS—DISTRICT

## CHAPTER TWO—DISTRICT CLERK

## Art. 1899. [1694] [1087] [1107] To record proceedings

Certified copies of records furnished free to ex-service men to support claims against United States, see art. 1939a.

## Art. 1901. Custody and care of records—removal of old records—deposit in museum

District Clerks shall have the custody of records pertaining to or lawfully deposited in their offices and shall carefully attend to the arrangement and preservation of the same; provided however, that records dated before 1860 in counties having a population of not less than ninety-eight thousand, two hundred and ten (98,210) and not more than ninety-nine thousand, two hundred and ten (99,210) according to the last preceding Federal Census may be removed under the following conditions:

That upon the application of the curator of any museum located in the county where the records are deposited, said museum to be maintained and operated by or in connection with a recognized higher educational institution of learning and upon the proper substitution of certified copies by the curator making application to the District Clerk, said records may be removed and placed in the care and custody of such curator, or his successor, all of which shall be without expense to the State. As amended Acts 1939, 46th Leg., p. 219, § 1.

Effective Jan. 23, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

## TITLE 41—COURTS—COUNTY

## CHAPTER ONE—THE COUNTY JUDGE

<p>Art. 1934a—4. Stenographer for county judge in counties of 15,140 to 15,160 [New].</p> <p>1934a—5. Stenographer for county judge in counties of 6,685 to 7,015 population; salary [New].</p>	<p>Art. 1934a—6. Stenographer for county judge in counties of 7,680 to 7,700; salary [New].</p> <p>1934a—7. Stenographer or clerk for county judge in counties of 7,700 to 7,800 and 10,399 to 10,499; salary [New].</p>
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## Art. 1932. 1738, 1131 Special judge in probate matter

When a county judge is disqualified to act in any probate matter, he shall forthwith certify his disqualification therein to the Governor, whereupon the Governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. A special judge so appointed shall receive the same compensation as is now or may hereafter be provided by law for regular judges in similar cases, and the Commissioners' Court shall, at the beginning of each fiscal year, include in the budget of the county, a sufficient sum for the payment of the special judge or judges appointed by the Governor to act for the regular county judge. As amended Acts 1939, 46th Leg., p. 187, § 1.

Effective May 15, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

## Art. 1934a—4. Stenographer for county judge in counties of 15,140 to 15,160

In any county in this State whose population as shown by the last preceding Federal Census is not more than fifteen thousand one hundred and sixty (15,160) and not less than fifteen thousand one hundred and forty (15,140) inhabitants, the County Judge shall be, and is hereby, authorized to employ a stenographer or clerk at a salary of One Hundred (\$100.00) Dollars per month, such salary to be paid monthly by county warrants drawn on the county General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners' Court of such county. Such stenographer or clerk shall be subject to removal at the will of such County Judge. Acts 1937, 45th Leg., p. 376, ch. 185, § 1.

Effective April 23, 1937.

Section 2 of this Act declared an emergency making the act effective on and after its passage.

Title of Act:

An Act authorizing the County Judge to employ a stenographer or clerk in any county having a population of not more

than fifteen thousand one hundred and sixty (15,160) and not less than fifteen thousand one hundred and forty (15,140) inhabitants according to the last preceding census; regulating the salary of same; providing for payment of salary; providing for removal and declaring an emergency. [Acts 1937, 45th Leg., p. 376, ch. 185.]

## Art. 1934a—5. Stenographer for county judge in counties of 6,685 to 7,015 population; salary

In any county in this State whose population as shown by the last preceding Federal Census is not more than seven thousand and fifteen (7,015) and not less than six thousand, six hundred and eighty-five (6,685) inhabitants, the County Judge shall be, and is hereby, authorized to em-

ploy a stenographer or secretary at a salary to be determined by the Commissioners Court, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners Court of such county. Such stenographer or secretary shall be subject to removal at the will of such County Judge. Acts 1939, 46th Leg., Spec.L., p. 747, § 1.

Effective Feb. 15, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the County Judge to employ a stenographer or secretary in any county having a population of not more than seven thousand and fifteen

(7,015) and not less than six thousand, six hundred and eighty-five (6,685) inhabitants according to the last preceding Federal Census; regulating the salary of same; providing for payment of salary; providing for removal; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 747.

**Art. 1934a—6. Stenographer for county judge in counties of 7,680 to 7,700; salary**

In any county in this State whose population as shown by the last preceding Federal Census of 1930 is not more than seven thousand, seven hundred (7,700) and not less than seven thousand, six hundred and eighty (7,680) inhabitants, the County Judge shall be and is hereby authorized to employ a stenographer or clerk at a salary not exceeding One Hundred Dollars (\$100) per month, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners Court of such county. Such stenographer or clerk shall be subject to removal at the will of such County Judge. Acts 1939, 46th Leg., Spec.L., p. 746, § 1.

Effective March 22, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the County Judge to employ a stenographer or clerk in any county having a population of not more than seven thousand, seven hundred (7,-

700) and not less than seven thousand, six hundred and eighty (7,680) inhabitants, according to the last preceding Federal Census of 1930; regulating the salary of same; providing for payment of salary; providing for removal; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 746.

**Art. 1934a—7. Stenographer or clerk for county judge in counties of 7,700 to 7,800, and 10,399 to 10,499; salary**

In any county in this State with a population of not more than seven thousand, eight hundred (7,800) and not less than seven thousand, seven hundred (7,700), and in counties of not more than ten thousand, four hundred and ninety-nine (10,499) and not less than ten thousand, three hundred and ninety-nine (10,399) inhabitants, according to the last preceding Federal Census, the County Judge shall be and is hereby authorized to employ a stenographer or a clerk at a salary of not to exceed One Hundred Dollars (\$100) per month. Such salary is to be paid monthly by county warrants drawn on the county general fund, the county salary fund, or the road and bridge fund, or either of them, on the orders of the Commissioners Court of such county. Such a stenographer or clerk shall be subject to removal at the will of such County Judge. Acts 1939, 46th Leg., Spec.L., p. 748, § 1.

Effective April 20, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the County Judge to employ a stenographer or clerk in counties having a population of not more than seven

thousand, eight hundred (7,800) and not less than seven thousand, seven hundred (7,700) and in counties of not more than ten thousand, four hundred and ninety-nine (10,499) and not less than ten thousand, three hundred and ninety-nine (10,399) inhabi-

tants, according to the last preceding Federal Census; fixing salary of same; providing for payment of salary; providing for removal; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 748.

## CHAPTER TWO—COUNTY CLERK

Art.

1939a. Certified copies of records furnished free to ex-service men to support claims against United States [New].

Art. 1939a. Certified copies of records furnished free to ex-service men to support claims against United States

Section 1. That from and after the effective date of this Act, all County Clerks, District Clerks, and other officials in this State who are required to issue any form of certificate or any copy or copies of instruments necessary as proof to establish any claim or claims of any ex-service men of the Federal Government, shall issue such certificate, and likewise certified copies of any instrument necessary to prove any fact or establish any claim of such ex-service men, free of any charge, and shall include the establishing of compensation status, and any other necessary fact to be established to aid and assist such ex-service men in completing the record of such service when necessary or required in the establishment of claims and necessary service status, in either the World War, the Spanish-American War, or any other active service, where such service was rendered, and where the person would, on proper proof, be entitled to compensation, insurance, or any other form of adjusted settlement for service rendered to the United States Government by such ex-service men. The County Clerk, District Clerk, or other officials issuing such certificates or certified copies of instruments, shall not be liable for any settlement for any such reduction, and the same shall not be counted as fees collected and chargeable to such office, and shall form no part of the maximum fees of such office. All of the provisions of Section 1 hereof, shall inure to the heirs at law of such ex-service men, where the proof is necessary to establish the claim emanating through or under such ex-service men.

Sec. 2. Ex-service men, as meant in this Act, shall include all those persons recognized by the United States Government as being entitled to adjustment compensation, or other form of settlement for service in time of war. Acts 1939, 46th Leg., p. 329.

Effective April 27, 1939.

Section 3 of the act of 1939 repeals all conflicting laws and parts of laws; section 4 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing and directing County Clerks, District Clerks, and other officials to issue certificates and certified copies of instruments in their respective offices to

ex-service men of the World War and the Spanish-American War where such certificates and copies of instruments are necessary to be used in furthering claims and establishing proof of such ex-service men to such claims for compensation, or other claims to be established; defining ex-service men; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., p. 329.

## CHAPTER FIVE—MISCELLANEOUS PROVISIONS

Art.

1969a-1. Exchange of judges in county courts at law and county crim-

inal courts in counties of over 300,000 population [New].

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Article 1965. [1779-1780] [1170] [1175] Minutes**

The Minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary be corrected, and signed in open Court by the County Judge. Each Special Judge shall sign the Minutes of such proceedings as were had before him; provided the Probate Minutes of said Court shall be approved and signed by the presiding Judge on the first day of each month, except, however, that if the first day of the month falls on a Sunday, then such approval shall be entered on the preceding day. As amended Acts 1939, 46th Leg., p. 188, § 1.

Effective May 18, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 1969a—1. Exchange of judges in county courts at law and county criminal courts in counties of over 300,000 population**

In any county in this State having a population in excess of three hundred thousand (300,000), according to the last preceding Federal Census, and in which there may be now, or at any future time, one or more county courts at law and one or more county criminal courts, the judges of such county criminal courts and such county courts at law may hold court for or with one another; to the extent necessary to enable the judge of any such county criminal court to hold court for or with the judge of any such county court at law, the same civil jurisdiction is hereby conferred on such county criminal court as now exists or may hereafter be conferred upon the county courts at law under the Constitution and laws of this State. Acts 1939, 46th Leg., Spec.L., p. 618, § 1.

Effective April 5, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the judges of county courts at law and county criminal courts in

certain counties to hold court for or with one another, and conferring the necessary civil jurisdiction upon judges of county criminal courts to enable them to hold court for or with judges of county courts at law; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 618.

**ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER**

**Art.**

- 1970—314. Red River county court; jurisdiction—District Court of Red River County; jurisdiction [New].
- 1970—315. Jurisdiction of County Court of Collingsworth increased [New].
- 1970—316. Jurisdiction of county court of Sterling County increased [New].
- 1970—317. Crosby and Fisher County Courts, civil jurisdiction increased [New].
- 1970—318. Gillespie County Court; probate jurisdiction conferred;

**Art.**

- civil and criminal jurisdiction diminished [New].
- 1970—319. County court of Kendall county; civil and criminal jurisdiction [New].
- 1970—320. Glasscock County Court; civil and criminal jurisdiction diminished [New].
- 1970—321. Stephens County Court; civil and criminal jurisdiction diminished [New].
- 1970—322. County court of Marion County; jurisdiction in criminal matters; fees of county judge [New].

**Art. 1970—122. Salary of judge; fees collected and accounted for**

The Judge of the County Court of Jefferson County at Law, shall receive a salary of Forty-five Hundred Dollars (\$4500) per annum, to be paid out of the

County Treasury of Jefferson County, Texas, on order of the Commissioners Court of said County, and said salary shall be paid monthly in equal installments. The Judge of the County Court of Jefferson County at Law shall assess the same fees as are now prescribed by law relating to County Judges' fees, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, no part of which shall be paid to the said Judge, but he shall draw a salary as above specified in this Section. [As amended Acts 1937, 45th Leg., p. 776, ch. 377, § 1.]

Amendment of 1937 effective May 19, 1937.

Section 2 of this Act read as follows:

"Sec. 2. All laws or parts of laws, in conflict herewith are hereby repealed as to those portions of such law, or laws, as are in conflict herewith."

Section 3 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

The title to the amending act of 1931 cites ch. 27 of Acts 1931, 42nd Leg., for amendment instead of ch. 295. Section 3 contains the provision that if any portion of the act is held invalid, such holding shall not invalidate the remainder.

**[Art. 1970—301. County courts at Law Nos. 1 and 2 Bexar County]**

Sec. 9. The Judges of the two County Courts at Law of Bexar County, Texas, may at any time exchange benches, and may at any time sit and act for and with each other in any civil or criminal case, matter or proceeding now and hereafter pending in either of the said County Courts at Law of Bexar County, Texas; and any and all such acts thus performed by the Judge of the County Court at Law No. 1, of Bexar County, Texas, or by the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall be valid and binding upon all parties to such cases, matters and proceedings. [As amended Acts 1937, 45th Leg., p. 45, ch. 33, § 1.]

Effective March 8, 1937.

Section 8 of Acts 1937, 45th Leg., p. 45, ch. 33, expresses in substance the legislative intent merely to amend sections 9, 11, 14, and 15 and add sections 15A, 21A, and 21B, to the above act and provides that if any section is held invalid, such invalidity

shall not affect the remainder of the act. Section 9 repeals all conflicting laws and parts of laws. Section 10 declared an emergency and provided that the act should take effect from and after its passage.

Sec. 11. The Judges of the County Courts at Law, Nos. 1 and 2, of Bexar County, Texas, shall each take the oath of office prescribed by the Constitution of Texas, but no bond shall be required of either of said Judges. The Judge of the County Court at Law No. 1, of Bexar County, Texas, shall receive an annual salary of Six Thousand (\$6,000.00) Dollars, and the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall receive an annual salary of Six Thousand (\$6,000.00) Dollars. Said salary shall be paid to each of said Judges in equal monthly installments out of the General Fund of Bexar County, Texas, by warrants drawn upon the County Treasury of said county upon orders of the Commissioners' Court of Bexar County, Texas. As amended Acts 1937, 45th Leg., p. 33, § 2; Acts 1939, 46th Leg., Spec.L., p. 617, § 1.

Effective June 9, 1939.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Sec. 14. Special judges may be appointed or elected for either or both of the County Courts at Law of Bexar County, Texas, and in the same manner as may now or hereafter be provided by the general laws of this state relating to the appointment and election of a special judge or judges of the several district and county courts of this state; and every such special judge thus appointed or elected for either of said two courts shall receive for the services he may actually perform as such special judge the same amount of pay which the regular judge of said court would be entitled to receive for such services. The amount to be paid to such special judge shall be paid out of the general fund of Bexar County, Texas, by warrants drawn upon the county treasury of said county upon orders of the Commissioners' Court of Bexar County, Texas; but no part of the amount paid to any special judge shall be deducted from or paid out of the salary of either of

the regular judges of said respective County Courts at Law. [As amended Acts 1937, 45th Leg., p. 45, ch. 33, § 3.]

Effective March 8, 1937.

Emergency section. See note under section 9, ante.

Sec. 15. The County Clerk of Bexar County, Texas, shall be the clerk of the County Court at Law No. 1, of Bexar County, Texas, and also the clerk of the County Court at Law No. 2, of Bexar County, Texas. The seal of said courts shall be the same as provided by law for County Courts, except that the seal of the County Court at Law No. 1, of Bexar County, Texas, shall contain the words "County Court at Law No. 1, of Bexar County, Texas", and the seal of the County Court at Law No. 2, of Bexar County, Texas, shall contain the words "County Court at Law No. 2, of Bexar County, Texas." The County Clerk of Bexar County, Texas, shall, upon the taking effect of this Act or as soon thereafter as may be possible, appoint a deputy for each of the said County Courts at Law; provided, however, that the persons thus appointed must be acceptable to the respective judges of said courts, and such appointment for each of said courts must be confirmed in writing by the Judge thereof before it becomes effective. The said two deputies thus appointed shall, before assuming their respective duties, take the oath of office prescribed by the Constitution of Texas, Article 16, Section 1 thereof; and the County Clerk of Bexar County, Texas, shall have the power and authority to require said deputies to furnish bonds in such amount, conditioned and payable as may be prescribed by said clerk or provided by law. The said two deputies shall act in the name of their principal and they, and each of them, may do and perform all such official acts as may be lawfully done and performed by the said County Clerk in person; and it shall be the duty of each of said two deputies to attend all sessions of the County Court at Law of Bexar County, Texas, to which he has been appointed, and perform such services in and for said courts as are usually performed by the County Clerk and their deputies in the several County Courts of this State; and said two deputies shall also perform any and all other services that may from time to time be assigned them by the Judges of said courts. The County Clerk of Bexar County, Texas, and his several deputies, including the two deputies to be appointed for said courts as hereinabove provided, shall, in all cases, both civil and criminal, pending in said courts when this Act takes effect, and also in all such cases thereafter filed in said courts, tax and assess and collect the same fees and costs, and in the same manner, as now provided by law for the County Courts of this state and the Judges thereof in similar cases; and all such fees and costs, when collected by said County Clerk and his several deputies, as well as any and all other sums of money received by said County Clerk and his deputies in their official capacity, shall by said Clerk and deputies be deposited in such fund, or paid to the proper person or persons entitled to the same, and in the manner, as may be provided by law. The said two deputies to be appointed for said two courts are authorized to act for one another in any matter pertaining to the clerical business of said courts, and it shall be their duty to thus act for one another when requested to do so by the Judges of said Courts or by the said County Clerk; but such deputies acting for one another shall not be entitled to receive, nor shall they receive, any additional compensation. The said two deputies shall, from and after their said appointment, confirmation and qualification, as herein provided, continue as such respective deputies at the pleasure of the Judges of said courts; and should either of said Judges for any reason whatsoever not further desire the services of said deputy clerk, the County Clerk of Bexar County, Texas, shall, upon request of such Judge or Judges, appoint another deputy for such court or courts, such appointment, however, to be made in the manner as hereinabove provided. In the event of a vacancy caused by any reason whatsoever the County Clerk of Bexar County, Texas, shall immediately appoint another deputy for the court in which a vacancy may occur, such appointment, however, shall be with written approval and confirmation of the Judge of the court in which a vacancy may occur. The salary of the deputy clerk appointed for each of the said County Courts at Law of Bexar County, Texas, shall be determined and fixed by the respective Judges of said courts in any amount not exceeding Two Thousand Five Hundred (\$2,500.00) Dollars annually; said annual salaries to be paid to said deputy clerks in equal monthly installments out of such

fund of Bexar County, Texas, as provided by law for the payment of the salaries of the several deputies of the County Clerk of Bexar County, Texas, and such payment of said salaries shall be made in the manner provided by law. However, before such monthly salaries are paid to said deputies the Judges of said courts shall cause to be filed with the County Clerk of Bexar County, Texas, or with the proper officer of said county, a written statement, signed by said Judges, certifying that said two deputies have performed the services required of them and that they are entitled to receive their said salaries, and such salaries of said deputies shall be paid to them only upon such certificate being signed and filed by said Judges. Provided that nothing contained in this section of this Act is intended to change or alter the duties and powers that have heretofore been and are now being exercised by the County Clerk of Bexar County, Texas, except as herein specifically and expressly stated. [As amended Acts 1937, 45th Leg., p. 45, ch. 33, § 4.]

Effective March 8, 1937.

Emergency section. See note under section 9, ante.

Sec. 15-A. The Sheriff of Bexar County, Texas, shall, by and through deputies to be appointed as hereinafter provided, attend all sessions of the County Court at Law No. 1, of Bexar County, Texas, and the County Court at Law No. 2, of Bexar County, Texas; and the Sheriff of Bexar County, Texas, shall, upon the taking effect of this Act, or as soon thereafter as may be possible, appoint one deputy for each of the said County Courts at Law of Bexar County, Texas; provided, however, that the persons thus appointed as such deputies must be acceptable to the Judges of said courts, and said appointments for each of said courts must be approved and confirmed in writing by the Judge of said court before same becomes effective. The said deputy sheriffs shall, before assuming their respective duties, take the oath of office prescribed by the Constitution of Texas, Article 16, Section 1 thereof; and the Sheriff of Bexar County, Texas, shall have the power and authority to require said deputies to furnish bonds in such amount, conditioned and payable as may be prescribed by said Sheriff or provided by law. The said two deputies shall act in the name of their principal and they may do and perform all such official acts as may be lawfully done and performed by the Sheriff of Bexar County, Texas, in person. The said two deputies shall, from and after their said appointment, confirmation and qualification, as hereinabove provided, continue as such respective deputies at the pleasure of the Judges of said courts; and should either of said Judges, for any reason whatsoever, not further desire the services of said deputy sheriffs, the Sheriff of Bexar County, Texas, shall, upon request of such Judge, appoint another deputy for such court, such appointment, however, to be made in the manner as hereinabove provided. It shall be the duty of the said two deputies, who are to be appointed as herein provided, to attend all sessions of the said two courts and also perform and render such services in and for said courts, and for the Judges thereof, as are usually and generally performed and rendered by Sheriffs and their deputies in and about the several district and county courts throughout this state, and including the serving of any and all process, subpoenas, warrants and writs of any and all kinds and nature, in both civil and criminal cases, matters and proceedings; and it shall be the duty of said deputy sheriffs to also perform and render any and all other services that may from time to time be assigned them, or to either of them, by the Judges of said courts. The said two deputies shall have, possess and enjoy the same rights, powers, authority and privileges that the Sheriffs and their deputies throughout this state now or may hereafter have, possess and enjoy. The said deputy sheriff of the said County Court at Law No. 1, of Bexar County, Texas, and the said deputy sheriff of the said County Court at Law No. 2, of Bexar County, Texas, are authorized and empowered to act for one another, and it shall be their duty to so act for one another when required to do so by either of the Judges of said courts or by said Sheriff; but said deputies thus acting for one another shall not be entitled to receive, nor shall they receive, any additional compensation. The Sheriff of Bexar County, Texas, shall, in the event of a vacancy caused by any reason whatsoever, immediately appoint another deputy for such court in which a vacancy may occur, such appointment, however, to be subject to the approval and written confirmation of the Judge of the court in which such vacancy may exist. The salary of the said deputy appointed for each of said County Courts at Law of Bexar County, Texas, shall be determined and fixed



by the Judge of said court in any sum not exceeding Two Thousand Five Hundred (\$2,500.00) Dollars annually. The said annual salaries to be paid to said two deputies, when fixed by said Judges as herein provided, shall be paid to them in equal monthly installments out of such fund of Bexar County, Texas, as provided by law for the payment of the salaries of the several deputies of the Sheriff of Bexar County, Texas, and such payment of said salaries shall be made in the manner provided by law. However, before such monthly salaries are paid to said deputy sheriffs the Judges of said courts shall cause to be filed with the Sheriff of Bexar County, Texas, or with the proper officer of said county, a written statement, signed by said Judges, certifying that said two deputies have performed and rendered the services required of them and that they are entitled to receive their said salaries. Provided that nothing contained in this section of this Act is intended to change or alter the duties and powers of the Sheriff of Bexar County, Texas, except as herein specifically and expressly stated. [Acts 1927, 40th Leg., p. 26, ch. 22, § 15-A, as added Acts 1937, 45th Leg., p. 45, ch. 33, § 5.]

Effective March 8, 1937.

Emergency section. See note under section 9, ante.

Sec. 21-A. The terms of office of the Judge of the County Court at Law No. 1, of Bexar County, Texas, and of the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall be two years. The present Judge of each of said courts shall continue as such Judge thereof until the expiration of his present term of office, and until his successor shall have been duly elected or appointed and qualified, as hereinafter provided. At the next general election to be held within this state and in Bexar County, Texas, after the taking effect of this Act, to-wit, the first Tuesday in the month of November, A. D. 1938, and every two years thereafter, at each general election, there shall be elected by the qualified voters of said county a Judge of each of said courts, both of whom shall be well informed in the laws of this State, and who shall hold their respective offices for a term of two years and until their successors shall have been duly elected or appointed and qualified; provided, however, that no person shall be eligible for Judge of either the said County Court at Law No. 1, of Bexar County, Texas, or the said County Court at Law No. 2, of Bexar County, Texas, unless he shall be a citizen of the United States and of this state, and shall have been a practicing lawyer of Bexar County, Texas, for at least four years next preceding his election, or is or has been a Judge of a court in this State. Should there be a vacancy in the office of Judge of either of said courts such vacancy shall be filled by appointment by the Commissioners' Court of Bexar County, Texas, and the person or persons thus appointed shall hold such office until their successor, or successors, who shall be elected at the next general election to be held in Bexar County, Texas, after such appointment, shall have qualified according to law; and the person thus appointed shall have the qualifications hereinbefore specified for a Judge of said courts. [Acts 1927, 40th Leg., p. 26, ch. 22, § 21-A, as added Acts 1937, 45th Leg., p. 45, ch. 33, § 6.]

Effective March 8, 1937.

Emergency section. See note under section 9, ante.

Sec. 21-B. The practice in said County Courts at Law of Bexar County, Texas, shall be the same as prescribed by laws relating to County Courts. Appeals and writs of error may be taken from judgments and orders of said two County Courts at Law of Bexar County, Texas, and from judgments and orders of the Judges thereof, in civil and criminal cases, and in the same manner as now is, or may hereafter be, prescribed by laws relating to appeals and writs of error from judgments and orders of the County Courts throughout this state, and the respective Judges thereof, in similar cases. And appeals may be taken from interlocutory orders of the said two County Courts at Law appointing a receiver, and also from orders of the said two County Courts at Law overruling a motion to vacate or an order appointing a receiver; provided, however, that the procedure and manner in which such appeals from interlocutory orders are taken shall be governed by the laws relating to appeals from similar orders of the District Courts through-

out this state. [Acts 1927, 40th Leg., p. 26, ch. 22, § 21-B, as added Acts 1937, 45th Leg., p. 45, ch. 33, § 7.]

Effective March 8, 1937.

Emergency section. See note under section 9, ante.

**Art. 1970—314. Red River County Court; jurisdiction—District Court of Red River County; jurisdiction**

Section 1. That the County Court of Red River County, Texas, shall have and exercise the general jurisdiction of Probate Courts, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons, and to apprentice minors as prescribed by law, and to exercise jurisdiction over all matters of eminent domain over which the County Courts have jurisdiction under the General Laws of this State; and to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts under such provisions as are, or may be, provided by General Law governing County Courts throughout the State; and said County Court shall also have original concurrent jurisdiction with the District Court of said County in all criminal cases of which County Courts throughout the State, under the General Laws of the State, have original jurisdiction; but said County Court shall have no other jurisdiction, civil or criminal.

Section 2. That the District Court of said County shall have and exercise jurisdiction in all matters and causes, civil or criminal, over which by General Laws of the State of Texas, the County Court of said County shall have jurisdiction; and that said District Court shall have exclusive appellate jurisdiction over all criminal cases appealed from the Justice Courts of said County; and that all criminal cases, now on the docket of the County Court of Red River County, Texas, which have been appealed from the Justice Courts of said County be, and the same are, hereby transferred to the District Court of said County; and writs and processes heretofore issued out of or by said County Court in such cases be, and the same are, hereby made returnable to the next term of the District Court of said County.

Section 3. That the Clerk of the County Court of Red River County, Texas, be, and he is hereby, required, within ten (10) days after this Act becomes effective, to make full and complete transcripts of all of the entries on his criminal docket heretofore made in those criminal cases which have been appealed from Justice Courts of said County, which by Section 2 hereof are transferred to the District Court of said County, and file the same, together with all original papers of all of said causes and proceedings, with the Clerk of the District Court of said County; and all of such causes under this Act transferred to the District Court shall be immediately docketed by the Clerk of said Court and shall stand on the docket of said Court as other cases which have been originally filed in the District Court of said County. Acts 1936, 44th Leg., 3rd C.S., p. 2087, ch. 498, as amended, Acts 1937, 45th Leg., p. 1135, ch. 457, § 1; Acts 1939, 46th Leg., p. 196, § 1.

Effective June 30, 1939.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of laws.

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to diminish the civil and criminal jurisdiction of the County Court of Red River County, Texas, and conform the jurisdiction of the District Court of such County to such change; repealing all laws in conflict, and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 2087, ch. 498.]

**Art. 1970—315. Jurisdiction of County Court of Collingsworth increased**

Section 1. The County Court of Collingsworth County shall have and exercise original concurrent jurisdiction with the justice courts in all civil matters which by the General Laws of this State is conferred upon said justice of the peace courts.

Sec. 2. Said County Court of Collingsworth County shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings as is by the General Laws of this State conferred upon county courts.

Sec. 3. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment in said County Court in civil cases of which said court has appellate jurisdiction, or original concurrent jurisdiction with the justice's court where the judgment or amount in controversy does not exceed One Hundred (\$100.00) Dollars, exclusive of interest and costs.

Sec. 4. Nothing in this Act shall be construed to deprive the justice courts of the jurisdiction now conferred upon them by law, or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Section 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justice's court to said county court in any case originally brought in a justice court where the right of appeal now exists by general law. [Acts 1937, 45th Leg., p. 375, ch. 184.]

Effective April 23, 1937.

Section 5 repeals all conflicting laws and parts of laws; section 6 declared an emergency making the act effective on and after its passage.

Title of Act:

An Act to increase the Civil Jurisdiction of the County Court of Collingsworth County, and declaring an emergency. [Acts 1937, 45th Leg., p. 375, ch. 184.]

### Art. 1970—316. Jurisdiction of Sterling County increased

Section 1. Hereafter the County Court of Sterling County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for county records.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which by this Act are made returnable to the County Court, and the Clerk of the District Court of said County shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Sterling County shall be such as provided by the Constitution and General Laws of the State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Sterling County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justices Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in civil cases, of which Court has appellate, original, or concurrent jurisdiction with the Justices Courts where the amount in controversy does not exceed One Hundred Dollars (\$100), exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said County Court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of this State.

Sec. 7. It shall be the duty of the District Clerk of Sterling County, Texas, within thirty (30) days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case, in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May, and on the first Monday in August, and the first Monday in November of each year, and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided that the County Commissioners Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners Court.

Sec. 9. All laws and parts of laws in conflict with this Act are hereby expressly repealed in so far as they relate to Sterling County, Texas. [Acts 1937, 45th Leg., p. 266, ch. 140; Acts 1937, 45th Leg., p. 362, ch. 176.]

Effective April 9 and 19, 1937.

The 45th Legislature, at its regular session in 1937, enacted two separate Acts, both cited to the text, relating to the jurisdiction of the County Court of Sterling County, reading verbatim the same. The provisions of the two Acts being identical, the text of one only is set out and both Acts are cited as credits to the text.

Section 10 of the Acts of 1937 declared an emergency making the acts effective on and after passage.

Title of Act:

An Act relating to the jurisdiction of the County Court of Sterling County, conferring upon said Court civil and criminal jurisdiction, and increasing the criminal and civil jurisdiction of said Court; conforming the jurisdiction of the District Court of said County to such change; fixing the time of holding Court, and to repeal all laws in conflict with this Act, and declaring an emergency. [Acts 1937, 45th Leg., p. 266, ch. 140.]

**Art. 1970—317. Crosby and Fisher County Courts, civil jurisdiction increased**

Section 1. That the County Courts of Crosby and Fisher Counties shall have and exercise original concurrent jurisdiction with the Justices Courts in all civil matters which by the General Laws of this State is conferred upon Justices Courts.

Sec. 2. Said County Courts shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the General Laws of this State is conferred upon County Courts.

Sec. 3. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said County Courts in civil cases of which said Courts have appellate or original concurrent jurisdiction with the Justices Courts where the judgment or amount in controversy does not exceed One Hundred Dollars (\$100), exclusive of interests and costs.

Sec. 4. This Act shall not be construed to deprive the Justices Courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said Courts over such matters as are specified in Section 1 of this Act, nor shall this Act be construed to deny the right of appeal from the Justices Courts to the said County Courts in any case originally brought in the Justices Courts where the right of appeal now exists by law. [Acts 1937, 45th Leg., p. 771, ch. 372.]

Effective May 19, 1937.

Section 5 of this act repeals all conflicting laws and parts of laws; section 6 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act to increase the civil jurisdiction of the County Courts of Crosby and Fisher Counties; repealing all laws and parts of laws in conflict; and declaring an emergency. [Acts 1937, 45th Leg., p. 771, ch. 372.]

**Art. 1970—318. Gillespie County Court; probate jurisdiction conferred; civil and criminal jurisdiction diminished**

Section 1. That hereafter the County Court of Gillespie County, Texas, shall have and exercise the general jurisdiction of a Probate Court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle accounts of executors, administrators, and guardians and transact all business pertaining to estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition and distribution and settlement of estates of deceased persons; and to apprentice minors as required by law and all matters of eminent domain over which the County Courts have jurisdiction under the General Laws of this State; and to issue all writs necessary to the enforcement of its jurisdiction; and to punish contempt under such provisions as are, or may be, provided by General Law covering County Courts throughout the State; but said County Court shall have no other jurisdiction, civil or criminal.

Sec. 2. That the District Court or Courts of said County shall have and exercise jurisdiction in all matters and causes, civil and criminal, over which, by the General Laws of this State, the County Court would have jurisdiction, except as provided in Section 1 of this Act and excepting all causes and matters, civil and

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

criminal, over which by the General Laws of the State, the Justice Courts of said County would have jurisdiction; and that all causes, other than probate matters and such as are provided in Section 1, be and the same are hereby transferred to the District Court or Courts of said County; and writs and processes, civil and criminal, heretofore issued out or by said County Court other than those pertaining to matters which by Section 1 of this Act, jurisdiction is given to the County Court, be and the same are hereby made returnable to the next term of the District Court or Courts of said County.

Sec. 3. That the Clerk of the County Court of Gillespie County, Texas, be and he is hereby required immediately after this Act becomes effective, to make full and complete transcripts of all the entries on his dockets, civil and criminal, heretofore made in causes, which by Section 2 are transferred to the District Court or Courts of said County, and file the same, together with all original papers of all of said causes and proceedings with the Clerk of the District Court or Courts of said County which shall include all judgments, both civil and criminal, that remain uncollected and not satisfied; and for the purpose of carrying into effect this Act, the Court having jurisdiction of such matters shall have full and ample power to enforce the same by issuing execution or other process required by law and all of such causes under this Act transferred to the District Court, shall be immediately docketed by the Clerk of said Court, and shall stand on the dockets of said Courts as appearance cases for the next term of said Court; for each of said transcripts, the County Clerk shall receive Twenty-five (25) Cents per one hundred (100) words, and Fifty (50) Cents for certificate thereto to be taxed against the party cast in the suit, if a civil suit and if criminal, against the defendant if convicted.

Sec. 4. This Act shall not be construed in any wise or in any manner as affecting judgments rendered by the County Court pertaining to matters and causes which by this Act are made returnable to the District Court but the Clerk of the District Court of said County shall issue all executions and orders of sale and proceedings thereunder shall be as valid and binding to all intents and purposes as though the change had not been made in this Act. [Acts 1937, 45th Leg., p. 1136, ch. 458.]

Effective 90 days after May 22, 1937, date of adjournment.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Jurisdiction of Gillespie County Court, see, also, art. 1970—312.

Title of Act:

An Act conferring jurisdiction upon the

County Court of Gillespie County in probate matters and general jurisdiction over estates and transferring the jurisdiction of said Court over civil and criminal cases to District Court of said County; and conforming the jurisdiction of the District Court to such change; and declaring an emergency. [Acts 1937, 45th Leg., p. 1136, ch. 458.]

#### **Art. 1970—319. County court of Kendall county; civil and criminal jurisdiction**

Section 1. That the County Court of Kendall County shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars (\$200.00) and shall not exceed five hundred dollars (\$500.00) exclusive of interest and shall have concurrent jurisdiction with the district court of said county when the matter in controversy shall exceed five hundred dollars (\$500.00) and not exceed one thousand dollars (\$1,000.00).

Sec. 2. Said county court shall have appellate jurisdiction in civil cases over which justices' court have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars (\$20.00), and said county court shall have power to hear and determine cases brought up from the justice's court by certiorari under the provisions of the title of the Revised Civil Statutes relating thereto.

Sec. 3. The county judge of said county shall have authority, either in term time or vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the Constitution has not exclusively conferred the power on the district court or judge thereof.

Sec. 4. Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which criminal cases said court has jurisdiction.

Sec. 5. Said county court shall have exclusive original jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except cases in which the highest penalty of fine that may be imposed under the law may not exceed two hundred dollars, and said courts shall also have appellate jurisdiction in criminal cases of which justices of the peace and other inferior tribunals of said county have jurisdiction.

Sec. 6. The District Court of Kendall County shall no longer have jurisdiction of cases of which the county court of said county by the provisions of this Act has exclusive original or appellate jurisdiction, and it shall be the duty of the clerk of the district court of said county within thirty days from the passage of this Act to make a full and complete transcript of all orders on his dockets in cases now pending before said district court of which cases by the terms of this Act exclusive jurisdiction is given to the county court, and to deliver said transcripts, together with the original papers and a certified bill of costs, to the clerk of said county court, and said county clerk shall enter said case or cases on his dockets for trial by said county court.

Sec. 7. The county court of said county shall hereafter hold its regular terms for civil and criminal business as provided in the Constitution and General Laws of the State, and process heretofore issued from the district court of said county in cases to be transferred under this Act to the county court shall be returnable to the first term of the county court, and all civil cases transferred shall be entered as appearance cases upon the dockets of said county court.

Sec. 8. The county court of said Kendall County shall have, as now, the general jurisdiction of probate courts for the probate of wills, appointments of guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, and for the issuance of letters testamentary and administration, settlement of accounts of administrators and guardians and the settlement of distribution of decedent's estates, and the apprenticeship of minors, and all other necessary powers conferred by law on courts of probate.

Sec. 9. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed. [Acts 1915, 34th Leg., 1st C.S., p. 55, ch. 27.]

Effective June 4, 1915.

**Art. 1970—320. Glasscock County Court; civil and criminal jurisdiction diminished**

Section 1. The County Court of Glasscock County shall have and exercise the general jurisdiction of a Probate Court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle the accounts of executors, administrators, and guardians, transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons, and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such provisions as are now or may be provided by General Law governing County Courts throughout the State, but the said County Court of Glasscock County shall have no other jurisdiction, civil or criminal, whatsoever.

Sec. 2. That the District Court of Glasscock County shall have and exercise jurisdiction in all civil and criminal matters and causes over which, by the laws of this State, the County Court of said Glasscock County would have jurisdiction, except as provided in Section 1 of this Act; all causes other than probate matters and such as are provided by Section 1 of this Act be and the same are hereby transferred to the District Court of Glasscock County, and all writs and process relating to any civil or criminal matters included in the subject matter of jurisdiction prescribed in Section 1 of this Act, issued by or out of said County Court of Glasscock County, be and the same are hereby made returnable to the next term of the District Court of said County after this Act takes effect.

Sec. 3. That the County Clerk of Glasscock County be and he is hereby required, within thirty (30) days after this Act takes effect, to make a full and complete tran-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

script of all entries upon his civil and criminal docket heretofore made in cases which by Section 2 of this Act are required to be transferred to the District Court of said County, together with all the papers pertaining to such cases, a certified bill of costs in each case, and all cases shall be immediately docketed by the District Court as appearance cases for the next succeeding term, and all criminal cases shall be docketed and disposed of in the same manner as if the same had been originally filed in and triable in said District Court, and all process now issued and returnable to said County Court shall be returnable to said District Court.

Sec. 4. That this Act shall not be construed to in anywise or manner affect judgments heretofore rendered by said County Court of Glasscock County pertaining to matters and causes which by Section 2 of this Act are transferred to the District Court of said County, but the County Clerk of said County shall issue all executions, and orders of sale, and proceedings thereunder, and this Act in so doing shall be valid and binding to all intents and purposes, the same as if no change had been made as by Section 2 therein contemplated. Acts 1939, 46th Leg., p. 191.

Effective March 18, 1939.

Section 5 of this Act repealed all conflicting laws and parts of laws. Section 6 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to diminish the civil and criminal jurisdiction of the County Court of Glasscock County and to conform the jurisdiction of the District Court thereto; providing that this Act shall not be construed to affect in any manner judgments heretofore rendered by said County Court

of Glasscock County pertaining to matters and causes which by Section 2 of the Act are transferred to the District Court of said County, but the County Clerk of said County shall issue all executions and orders of sale and proceedings thereunder; and this Act in so doing shall be valid and binding to all intents and purposes, the same as if no changes had been made as by Section 2 therein contemplated; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., p. 191.

**Art. 1970—321. Stephens County Court; civil and criminal jurisdiction diminished**

Section 1. That the County Court of Stephens County shall retain and continue to have and exercise the general jurisdiction in matters of eminent domain, and the general jurisdiction of Probate Courts, and all jurisdiction other than in civil and criminal matters, jurisdiction of which is here conferred on the District Court of Stephens County, Texas, now or hereafter conferred upon such County Court by the Constitution and Laws of the State, and shall retain all jurisdiction and power to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts; but said County Court shall have no civil or criminal jurisdiction, except as to final judgments referred to in Section 2 hereof.

Sec. 2. That the District Court having jurisdiction in said Stephens County shall have and exercise jurisdiction in all matters and cases of a civil and criminal nature, whether the same be of original jurisdiction or of appellate jurisdiction, over which, by the General Laws of the State of Texas now existing and hereinafter enacted, the County Court of said County would have had jurisdiction, and that all pending civil and criminal cases be and the same are hereby transferred to the District Court for the Ninetieth Judicial District of Texas, sitting in Stephens County, Texas, and all writs and process heretofore issued by or out of said County Court in said civil or criminal cases be and the same are hereby made returnable to the next term of the District Court, in and for the Ninetieth Judicial District of Texas, sitting in Stephens County, Texas. Provided, however, that there shall not be transferred to said District Court jurisdiction over any judgments, even in civil or criminal cases, rendered prior to the time this Act takes effect and which have become final, but as to such judgments the said County Court shall retain jurisdiction for the enforcement thereof by execution, order of sale, or other appropriate process. Provided further, however, that as to any civil or criminal case on appeal from said County Court, should a judgment be entered by the Court of Civil Appeals or the Supreme Court, or the Court of Criminal Appeals, remanding the case for a new trial or for further proceedings, same shall be remanded to the District Court of Stephens County, Texas, and all jurisdiction in respect to said particular case shall thereafter vest in the District Court sitting in and having jurisdiction of Stephens County, Texas.

Sec. 3. That the County Attorney of Stephens County, Texas, shall represent the State in all misdemeanor cases before the District Court of Stephens County, Texas, and shall receive therefor the same fees to which he would be entitled under the law as County Attorney had said cases been tried in the County Court.

Sec. 4. That the Clerk of the County Court of said Stephens County be and is hereby required, within twenty (20) days after this Act takes effect, to file with the Clerk of the District Court of said County, all original papers in cases here transferred to the said District Court, and all Judges' dockets and certified copies of any interlocutory judgment or other order entered in the Minutes of the County Court in said cases so transferred, and the District Clerk shall immediately docket all such cases on the docket of the said District Court for the Ninetieth Judicial District of Texas, and all such cases shall stand on the docket of said Court in the same manner and place as each stands on the docket of the County Court. Provided, further, that it shall not be necessary that the District Clerk refile any papers theretofore filed by the County Clerk, nor shall he receive any fees for the filing of same, but papers in said case bearing the file mark of the County Clerk, prior to the time of said transfer, shall be held to have been filed in the case as of the date filed without being refiled by the District Clerk. Said County Clerk in cases so transferred shall accompany the papers with a certified bill of cost, and against all cost deposits, if any, the County Clerk shall charge accrued fees due him, and the remainder of the deposit he shall pay to the District Court as a deposit in the particular case for which same was deposited. Credit shall also be given the litigants for all jury fees paid in the County Court. Acts 1939, 46th Leg., p. 198.

Effective April 5, 1939.

Section 5 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to diminish the civil and criminal jurisdiction of the County Court of Stephens County, Texas, and to conform the jurisdiction of the District Court of such County to such change; to preserve the jurisdiction and power of the County Court of Stephens County, Texas, over certain final judgments rendered prior to the passage of this Act; to require the County

Clerk of such County to transmit all papers in pending civil and criminal cases to the District Court of said County; and to continue in effect the filing date of papers previously filed in the County Court in said pending cases; to fix fees that the District Clerk of such County will be authorized to charge in connection with filing of papers so transmitted to him; to provide for the County Attorney of Stephens County, Texas, to represent the State in misdemeanor cases in the District Court; and to declare an emergency. Acts 1939, 46th Leg., p. 198.

**Art. 1970—322. County court of Marion County; jurisdiction in criminal matters; fee of county judge**

Section 1. In addition to the jurisdiction heretofore conferred by law upon the County Court of Marion County, Texas, and the County Judge of Marion County, Texas, the said County Court shall have jurisdiction within Marion County of all criminal matters and causes of misdemeanor over which the District Court of Marion County, Texas, now has jurisdiction, and the jurisdiction of said Courts over such matters shall be concurrent, provided that the jurisdiction of the District Court of Marion County, Texas, shall be and remain as now fixed by law and be in nowise affected by this Act; and provided further, that the jurisdiction hereby conferred upon the County Judge of Marion County, Texas, shall extend to and only to those cases in which pleas of guilty are entered by the defendant in any cases of misdemeanor filed in said Court.

Sec. 2. The County Judge of Marion County, Texas, shall receive a fee of Three Dollars (§3) for each and every case tried before him in which a plea of guilty is entered, and the fees of the other officers of the Court shall be and remain as is now provided by the laws of this State. Acts 1939, 46th Leg., p. 194.

Effective May 13, 1939.

Section 3 of Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to enlarge the jurisdiction of the County Court of Marion County, Texas,

in criminal cases to enable the County Judge of Marion County, Texas, to accept pleas of guilty in all cases of misdemeanor; providing for fees to County Judge in certain cases; providing fees for other officers of the Court shall be the same as now provided by laws of the State; and declaring an emergency. Acts 1939, 46th Leg., p. 194.



## TITLE 42—COURTS—PRACTICE IN DISTRICT AND COUNTY

### CHAPTER TWO—PLEADING

#### 1. PLEADING IN GENERAL

Art.

2002a. Filing pleadings; copy delivered to adverse party or to clerk; withdrawal [New].

Art.

2002b. Filing pleadings; several adverse parties; number of copies furnished [New].

2002c. Failure to furnish copy of pleadings to adverse party; contempt of court [New].

#### 1. PLEADING IN GENERAL

Art. 2002a. Filing pleadings; copy delivered to adverse party or to clerk; withdrawal

Whenever any party files a pleading of any character, he shall at the same time either deliver to the adverse party, or deposit with the Clerk for the adverse party, a copy of such pleading, which copy shall not be filed by the Clerk. All filed pleadings shall remain at all times in the Clerk's office or in the Court or in custody of the Clerk, except that the Court may by order entered on the Minutes allow a filed pleading to be withdrawn for a limited time whenever necessary, on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy. Acts 1939, 46th Leg., p. 203, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 4 of the act reads as follows: "The foregoing Sections of this Act shall become Articles 2002a, 2002b, and 2002c, respectively, of Chapter 2 to Title 42 of the Revised Civil Statutes of Texas." Section 5 repeals all conflicting laws and parts of laws. Section 6 declared an emergency and

provided that the act should take effect from and after its passage.

Title of Act:

An Act to preserve filed pleadings by making just and convenient regulations to such end; providing this Act shall be known as Articles 2002a, 2002b, and 2002c, Revised Civil Statutes of Texas; repealing all conflicting laws; and declaring an emergency. Acts 1939, 46th Leg., p. 203.

Art. 2002b. Filing pleadings; several adverse parties; number of copies furnished

If there is more than one adverse party and the adverse parties are represented by different attorneys, one copy of such pleading shall on request be furnished to each attorney representing the adverse parties, but a firm of attorneys associated in the case shall count as one. Not more than four (4) copies of any pleading shall be required to be furnished to adverse parties and they shall be delivered to the first four (4) applicants entitled thereto. After a copy of a pleading is furnished to an attorney or deposited with the Clerk for him, he cannot require another copy of the same pleading to be furnished to him. Acts 1939, 46th Leg., p. 203, § 2.

Effective 90 days after June 21, 1939, date of adjournment.

Art. 2002c. Failure to furnish copy of pleadings to adverse party; contempt of court

If any party fails to furnish the adverse party with a copy of any pleading in accordance with this provision, he may be required to do

so by order of the Court on motion made and notice given, and if he fails to comply with any such order within five (5) days after its date, he may be punished as for contempt of Court, and a certified copy may be ordered to be furnished by the Clerk and the costs thereof charged to the party who had failed to comply with the order to furnish the same. Acts 1939, 46th Leg., p. 203, § 3.

Effective 90 days after June 21, 1939, date of adjournment.

### 3. PLEADINGS OF THE DEFENDANT

#### Art. 2007. 1903 Plea of privilege

A plea of privilege to be sued in the county of one's residence shall be sufficient if it be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of process thereon, nor at the time of filing such plea, a resident of the county in which suit was instituted and shall state the county of his residence at the time of such plea, and that 'no exception to exclusive venue in the county of one's residence provided by law exists in said cause'; and such plea of privilege when filed shall be prima facie proof of the defendant's right to change of venue; provided that such plea shall not be construed to embrace any of the matters set forth in the Revised Civil Statutes, Article 2010. If the plaintiff desires to controvert the plea of privilege, he shall within five days after appearance day file a controverting plea under oath, setting out specifically the fact or facts relied upon to confer venue of such cause on the court where the cause is pending. As amended Acts 1939, 46th Leg., p. 204, § 1.

Effective January 1, 1940.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the act should take effect from and after January 1, 1940.

## CHAPTER SIX—CERTAIN DISTRICT COURTS

Art.

2093b. Additional return and appearance days in district courts in districts

Art.

composed of two or more counties [New].

#### Art. 2092. Rules of practice and procedure

The following rules of practice and procedure shall govern and be followed in the Civil District Courts in counties having two (2) or more District Courts with civil jurisdiction only, whose terms continue three (3) months or longer and in all civil litigation in counties having five (5) or more District Courts with either civil or criminal jurisdiction or both civil and criminal jurisdiction:

1. Citation. Citations issued for personal service in the county in which the suit is pending shall command the officer to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of the twenty-five (25) days from the date of citation and shall be executed and returned by the officer twenty (20) days after date of issuance.

2. Execution and Return. Citations or notices issued for personal service on a defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five (55) days from the date the citation or notice is issued, shall be executed or served on or before thirty-five (35) days from the date of issue and shall be made returnable thirty-five (35) days after such date.

3. Out-County Citation. Citation for defendants alleged to reside or be outside of the county in which the suit is pending, but within this State, shall be directed to the Sheriff or any constable of the county where the defendant is alleged to reside or be and shall command him to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of thirty (30) days from the date the citation is issued and shall be executed and returned to the officer within twenty (20) days after the date of issue.

4. Time for Appearance. Citations or notices issued for personal service on a defendant alleged to reside or be outside of the State but within the United States, shall notify the defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five (55) days from the date the citation or notice is issued and shall be executed or served on or before thirty-five (35) days from the date of issue and shall be made returnable thirty-five (35) days after date of issue.

5. Citation Shall Specify Day. In each of said cases the citation or notice shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and if any defendant so served does not appear and answer at or before the time specified in such citation or notice, judgment by default may be rendered against such defendant.

6. Citation by Publication. If citation is to be served by publication it shall be returnable forty-two (42) days after the date of issue and shall command the defendant to appear at or before ten o'clock a. m. of the Monday next following the expiration of forty-two (42) days after the citation was issued, and shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and shall be served by being published in the manner and for the length of time required by law for citations by publication in the same kind of cases or matters in other District Courts at the time the publication is made and the first publication shall be at least twenty-eight (28) days before the return day of the citation.

7. Service in Foreign Country. If citation is issued to be served personally on any defendant or party in any foreign country it shall be made returnable at such time as the plaintiff or person procuring its issuance shall direct, which shall not be less than thirty (30) days nor more than one hundred and twenty (120) days after the date of issue and shall notify and command the defendant or person to be served to appear and answer at or before ten o'clock a. m. of the Monday next following the expiration of twenty (20) days after the return day of the citation or notice and shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and shall be served on or before the return day, and if any defendant so served does not appear and answer at or before the time specified in the citation or notice, judgment by default may be rendered against such defendant.

8. Where Citation or Service is Quashed. If the citation or service thereof is quashed on motion of the defendant, such defendant shall be deemed to have entered his appearance at ten o'clock a. m. on the Monday next after the expiration of twenty (20) days after the day on which the citation or service is quashed, and such defendant shall be deemed to have been duly served so as to require him to appear and answer at that time, and if he fails to do so, judgment by default may be rendered against him.

9. Writs of Attachment. Writs of attachment shall be executed immediately after their issuance. Every such writ shall be made return-

able, on or before ten o'clock a. m. of the Monday next after the expiration of fifteen (15) days from the issuance of the writ, and the officer executing the writ shall return the same at or before that time with his action indorsed thereon or attached thereto, signed by him officially, showing how he has executed the writ.

10. Writs of Garnishment. Writs of garnishment shall be executed immediately after their issuance and every such writ shall command the officer to summon the garnishee to appear at or before ten o'clock a. m. of the Monday next following the expiration of twenty-five (25) days from the date the writ was issued and the writ shall specify when and where the garnishee is required to answer and the officer receiving the writ of garnishment shall within fifteen (15) days after the issuance of the writ make his return showing how he has executed the writ.

11. Failure of Garnishee to Answer. If the garnishee fails to make answer to the writ on or before ten o'clock a. m. of the Monday next following the expiration of twenty-five (25) days from the date of the writ, he shall be in default and it shall be lawful for the Court, at any time after judgment shall have been rendered against the defendant, to render judgment by default against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs. The plaintiff in garnishment shall have fifteen (15) days after the garnishee's answer is filed within which to controvert the same if he so desires.

12. Other Writs and Process. All other writs and process not expressly otherwise provided for in this Article and which under the general law are now returnable to the first day of the next term of Court after the issuance thereof, and which require the defendant or person served to appear on the first day of the next succeeding term, shall be returnable fifteen (15) days after the date thereof and shall be executed and returned at or before the expiration of fifteen (15) days from the date thereof and shall require the defendant or party served to appear and answer at or before ten o'clock a. m. of the Monday next after the expiration of twenty-five (25) days after such writ or process was issued, and all such writs or process shall so specify.

13. Appealed Cases. In cases appealed to said District Courts from inferior Courts, the appeal, including transcript, shall be filed in the District Court within thirty (30) days after the rendition of the judgment or order appealed from, and the appellee shall enter his appearance on the docket or answer to said appeal on or before ten o'clock a. m. of the Monday next after the expiration of twenty (20) days from the date the appeal is filed in the District Court.

14. Pleas of Privilege. Pleas of privilege shall be filed at or before the time the defendant is required to answer and a contest thereof if any, shall be filed within twenty (20) days after the appearance day, and if a contest is filed, the same shall, when filed, be set for hearing by the Court within not exceeding thirty (30) days after being filed and shall be determined by the Court within not exceeding ten (10) days after the date for which the same is set unless postponed or continued without prejudice, by order or leave of the Court, by agreement of the parties, and shall not be postponed longer than sixty (60) days after being filed unless by order of the Court entered by agreement of the parties.

15. Amended Pleadings. Whenever any party files a pleading of any character, he shall at the same time either deliver to the adverse party, or deposit with the Clerk for the adverse party, a copy of such

pleading, which copy shall not be filed by the Clerk. All filed pleadings shall remain at all times in the Clerk's office or in the Court or in custody of the Clerk, except that the Court may by order entered on the Minutes allow a filed pleading to be withdrawn for a limited time whenever necessary on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy.

16. Where More Than One Adverse Party. If there is more than one adverse party and the adverse parties are represented by different attorneys, one copy of each pleading shall on request be furnished to each attorney representing the adverse parties, but a firm or attorneys associated in the case shall count as one. Not more than four (4) copies of any pleading shall be required to be furnished to adverse parties and they shall be delivered to the first four (4) applicants entitled thereto. After a copy of a pleading is furnished to an attorney or deposited with the Clerk for him, he cannot require another copy of the same pleading to be furnished to him.

17. Failure to Furnish Copy. If any party fails to furnish the adverse party with a copy of any pleading in accordance with this Article, he may be required to do so by order of the Court on motion made and notice given, and if he fails to comply with any such order within five (5) days after its date, he may be punished for contempt of Court, and the Court may order the Clerk to furnish a certified copy, the costs thereof to be charged against the party who failed to comply with the order to furnish it.

18. Setting Cases for Trial, Etc. On the first Monday in each calendar month the Judge of each Court may, and as far as practicable shall, set for trial during the calendar month next after the month during which the setting is made, all contested cases which are requested to be set, and by agreement of the parties, or on motion of either party, or on the Court's own motion with notice to the parties, the Court may set any case for trial at any time so as to allow the parties reasonable time for preparation. Non-contested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.

18a. Assignment Clerks. In all counties having a population of more than three hundred thousand (300,000) inhabitants and less than three hundred and fifty thousand (350,000) inhabitants, according to the preceding Federal Census, a majority of the District Judges of the District Courts with civil jurisdiction only may appoint an Assignment Clerk to serve under the Presiding Judge of said District Courts in the setting and disposing of cases on the general Jury Docket. The salary of said Clerk shall be fixed by the Commissioners Court of the county and paid in monthly installments on voucher approved by the Presiding Judge of said Courts. His appointment shall be for a term of two (2) years, but he shall be subject to dismissal by a majority of said Judges for inefficiency or misconduct.

19. Postponement or Continuance. Cases may be postponed or continued by agreement with the approval of the Court, or upon the Court's own motion or for cause. When a case is called for trial and only one party is ready, the Court may for good cause either continue the case for the term or postpone and reset it for a later day in the same or succeeding term.

20. Cases May Be Reset. A case that is set and reached for trial may be postponed for a later day in the term or continued and reset for a day certain in the succeeding term on the same grounds as an application for continuance would be granted in other District Courts. After any case has been set and reached in its due order and called for

trial two (2) or more times and not tried; the Court may dismiss the same unless the parties agree to a postponement or continuance but the Court shall respect written agreements of counsel for postponement and continuance if filed in the case when or before it is called for trial unless to do so will unreasonably delay or interfere with other business of the Court.

21. Exchange and Transfer. The Judges of such Courts may, in their discretion, exchange benches or districts from time to time, and may transfer cases and other proceedings from one Court to another, and any of them may in his own courtroom try and determine any case or proceeding pending in another Court without having the case transferred, or may sit in any other of said Courts and there hear and determine any case there pending, and every judgment and order shall be entered in the Minutes of the Court in which the case is pending and at the time the judgment or order is rendered, and two (2) or more Judges may try different cases in the same Court at the same time, and each may occupy his own courtroom or the room of any other Court. The Judge of any such Court may issue restraining orders and injunctions returnable to any other Judge or Court, and any Judge may transfer any case or proceeding pending in his Court to any other of said Courts, and the Judge of any Court to which a case or proceeding is transferred shall receive and try the same, and in turn shall have power in his discretion to transfer any such case to any other of said Courts and any other Judge may in his courtroom try any case pending in any other of such Courts.

22. Cases Transferred to Judges not Occupied. When the Judge of any such Court shall become disengaged, he shall notify the Presiding Judge, and the Presiding Judge shall transfer to the Court of the disengaged Judge the next case which is ready for trial in any of said Courts. Any Judge not engaged in his own Court may try any case in any other Court.

23. Judge Disqualified. If a Judge of any Court is disqualified in any case pending in his Court, and his disqualification is certified to the Governor, the Governor may require the Judge of any other of such Courts to exchange benches or districts with the disqualified Judge, and may, at any time, require any of such Judges to exchange districts with each other or with any other District Judge. In case of the absence, sickness, or disqualification of any Judge, any other of said Judges may hold Court for him or may transfer from his Court to any other of said Courts any case or proceeding then pending in the Court of said absent, sick, or disqualified Judge and in such circumstances the practicing lawyers of the Court may elect a special Judge of said Court in the same manner as provided in Chapter 1 of Title 40 of the Revised Civil Statutes of 1925,<sup>1</sup> and such special Judge when so elected shall have and exercise all the powers and duties which the regular Judge of said Court could have and exercise.

<sup>1</sup> Articles 1812-1826.

24. Judge May Hear Only Part of Case. Any Judge may hear any part of any case or proceeding pending in any of said Courts and determine the same, or may hear and determine any question in any case, and any other Judge may complete the hearing and render judgment in the case.

25. Any Judge May Hear Dilatory Pleas, Etc. Any Judge may hear and determine demurrers, motions, petitions for injunction, applications for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trial and all

preliminary matters, questions and proceedings and may enter judgment or order thereon in the Court in which the case is pending without having the case transferred to the Court of the Judge acting, and the Judge in whose Court the case is pending may thereafter proceed to hear, complete, and determine the case or other matter, or any part thereof, and render final judgment therein. Any judgment rendered or action taken by any Judge in any of said Courts in the county shall be valid and binding.

26. Selection of Presiding Judge. The Judges of such Courts shall twice a year, in January and July, select one of their number as Presiding Judge and may at any time cancel and annul such selection and select any other Judge as Presiding Judge. Each such proceeding shall be by majority vote. Each Judge shall enter on his Minutes an order reciting the selection of the Presiding Judge. The Presiding Judge may assign any case in his Court or any of such Courts in the county to any other Judge or Court, or may assign any Judge to try any case in any of the Courts, and the Judge in whose Court an assigned case is pending shall transfer the case to the Court to which it is assigned, and the Judge of the Court to which it is assigned shall receive and try the case, and such Judge shall hold any other Court or try any case which he is requested by the Presiding Judge to try.

27. Judges May Make Rules. The Judges may by a majority vote make rules for the calling of the docket, for the setting and postponement of cases, for the hearing and acting upon motions, questions of law, applications for injunctions and receivers, and for classifying and distributing cases and for having one calendar for all set cases in all Courts and for prescribing when the different Courts shall have jury trials and when they shall have nonjury trials, and such other rules as they deem advisable to facilitate the dispatch of business. All rules made by said Judges shall be adopted by order of each Judge and spread upon the Minutes of his Court, but such rules shall not be inconsistent with any rule adopted or prescribed by the Supreme Court, nor in conflict with any law of this State.

28. Motion for New Trial. A motion for new trial filed during one term of Court may be heard and acted on at the next term of Court. If a case or other matter is on trial or in process of hearing when the term of Court expires, such trial, hearing, or other matter may be proceeded with at the next term of the Court. No motion for new trial or other motion or plea shall be considered as waived or overruled, because not acted on at the term of Court at which it was filed, but may be acted on at the succeeding term or at any time which the Judge may fix or to which it may have been postponed or continued by agreement of the parties with leave of the Court. All motions and amended motions for new trials must be presented within thirty (30) days after the original motion or amended motion is filed and must be determined within not exceeding forty-five (45) days after the original or amended motion is filed, unless by written agreement of the parties in the case, the decision of the motion is postponed to a later date.

29. Time to File Motion for New Trial. A motion for new trial where required shall be filed within ten (10) days after the judgment is rendered or other order complained of is entered, and may be amended by leave of the Court at any time before it is acted on within twenty (20) days after it is filed.

30. Judgment Final, When. Judgments of such civil District Courts shall become as final after the expiration of thirty (30) days after the date of judgment or after a motion for a new trial is overruled as if the term of Court had expired. After the expiration of thirty (30)

days from the date the judgment is rendered or motion for new trial is overruled, the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review in other District Courts.

31. Appeal Bonds Filed, When. In appeals from such civil District Courts the appeal bond shall be filed within thirty (30) days after the judgment or order appealed from is rendered, if no motion for new trial is filed, and if a motion for new trial is filed, the appeal bond shall be filed within thirty (30) days after the motion for new trial is overruled. In such appeals the statement of facts and bills of exception shall be filed within ninety (90) days after the judgment is rendered if there is no motion for new trial, but if there is a motion for new trial then ninety (90) days after motion for new trial is overruled. When a statement of facts or bills of exception is presented to the adverse party, or his attorney, it shall be returned within five (5) days signed by the attorney of such adverse party if found correct, and if found incorrect shall be returned within that time with a written statement of the objections thereto. As amended Acts 1939, 46th Leg., p. 205, § 1.

Effective June 7, 1939.

Act should take effect from and after its

Section 2 of the amendatory Act of 1939 declared an emergency and provided that the

passage.

**Art. 2093b. Additional return and appearance days in district courts in districts composed of two or more counties**

In District Courts in each Judicial District of this State composed of two or more counties, each county thereof having two terms of court, such terms continuing for twenty-six weeks, it is provided that in addition to the return day and appearance day at each regular term of court, as now provided by the General Laws for the return of civil citations, writs, process and causes of action and the perfection of service thereof, the twelfth Monday after the first Monday of each regular term of court shall be and same is hereby made return day for all civil citations, writs, process and causes of action as fully and to the same extent as a regular term of court and the return day of a regular term of court. The day following said return day is hereby made appearance day. All citations, writs, or process issued for service and return to said return day aforesaid shall be addressed to the twelfth Monday after the first Monday of the regular term of court in session at the date of the issuance thereof, naming said term, and shall be otherwise issued, served and returned in the same form, manner, and for the length of time required by law for civil citations, writs, process or causes of action made returnable to a regular term of court; and when so addressed, issued, served and returned, service thereof shall be perfected to said return day aforesaid to the same extent and effect as to a regular term of court. It is further provided that any civil citation, writ, process or cause of action, service of which may be imperfect to the regular term of court shall be perfected to said return day aforesaid to the same extent and effect as to a regular term of court. Any judgment, decree, order or disposition that might properly be made or entered upon any civil citation, writ, process or cause of action returnable to a regular term of court may be made and entered upon any such civil citation, writ, process or cause of action returnable to, or service of which may be perfected to the return day aforesaid. Acts 1939, 46th Leg., p. 218, § 1.

Effective April 18, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for additional return and appearance days for civil citations, writs, process and causes of action, in Dis-



**303. COURTS—PRACTICE IN DISTRICT AND COUNTY Tit. 42, Art. 2116d**  
For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

district Courts in each Judicial District of this State composed of two or more counties, each county thereof having two terms of court, such terms continuing for twenty-

six weeks; providing and prescribing procedure; and declaring an emergency. Acts 1939, 46th Leg., p. 213.

## CHAPTER SEVEN—THE JURY

### 2. JURY COMMISSIONERS

Art.

2116d. Service by sheriff, defined; service by registered mail [New].

Art.

2116e. Summoning jurors in capital cases in counties of 25,000 population or more; verbally or by registered mail [New].

### 2. JURY COMMISSIONERS

Art. 2104. [5122-23-24] Appointment of jury commissioners [Repealed in part]

The District Judge shall at each term of the District Court appoint not less than three, nor more than five persons to perform the duties of Jury Commissioners, and shall cause the sheriff to notify them of their appointment, and when and where they are to appear. Such Commissioners shall receive as compensation for each day or part thereof, they may serve as such Commissioners, the sum of Three (\$3.00) Dollars, and who shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write.
2. Be qualified jurors and freeholders in the county.
3. Be residents of different portions of the county.
4. Have no suit in said court which requires the intervention of a jury.
5. The same person shall not act as Jury Commissioner more than once in the same year. As amended by Acts 1929, 41st Leg., p. 71, ch. 37, § 1.

This article was repealed as to counties of 16,775 and not more than 17,000 population by Acts 1929, 41st Leg., 1st C.S. p. 176, ch. 167, § 17. Effective 20 days after May 21, 1929, date of adjournment.

Act of 1929, 41st Leg., 1st C.S., p. 176,

ch. 167, § 17, repealing articles 2104-2116, 2118, 2141, 2146, 2150, as to counties of 16,775 and not more than 17,000 population, was held unconstitutional in Randolph v. State, 117 Cr.R. 80, 36 S.W.2d 484.

Art. 2116d. Service by sheriff, defined; service by registered mail

That the phrase, "Served by the Sheriff to appear and report for jury service," as used in Chapter 7,<sup>1</sup> Title 42, Revised Statutes of 1925, of the State of Texas, shall mean verbal service upon the juror by the Sheriff, unless the Judge drawing the jury shall direct the Sheriff to make service by United States registered mail.

In the event the Judge drawing the jury directs the Sheriff to make service by United States registered mail, it shall be sufficient if the summons to report for jury service states the time and place when said juror is to report, and if same be mailed in the United States mail by registered letter to the juror at the address shown by the card placed in the jury wheel, or the address shown by the last assessment roll of the County, and if said letter be received by some person authorized by the United States mails to receive said letter. The return receipt of the United States Post Office Department showing said letter was received by said juror, or by some person authorized by the United States Post Office Department to receive same for him, shall be deemed prima facie evidence

that the juror actually received such notice. Acts 1937, 45th Leg., p. 677, ch. 338, § 1.

1 Articles 2094-2151.

Effective 90 days after May 22, 1937, date of adjournment.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act defining the phrase, "Served by the Sheriff to appear and report for jury

service," as used in Chapter 7, Title 42, Revised Statutes 1925, so as to authorize the Judge drawing the jury to direct that said service may also be made by sending each juror a letter by United States registered mail, notifying him of his jury service; and declaring an emergency. [Acts 1937, 45th Leg., p. 677, ch. 338.]

#### Art. 2116e. Summoning jurors in capital cases in counties of 25,000 population or more; verbally or by registered mail

That in counties having therein a city of twenty-five thousand (25,000) or more population, as shown by the last preceding Federal Census, jurors summoned in capital cases shall be served verbally by the sheriff to appear, or if so ordered by the judge drawing said jury, shall be served by the sheriff by registered mail to appear.

In the event the Judge drawing the jury directs the sheriff to make service by registered United States mail, it shall be sufficient if the summons to report for jury service states the time and place where said juror is to report, and if same be mailed in the United States mail by registered letter to the juror at the address shown by the card placed in the jury wheel, and if said letter be received by some person authorized by the United States mails to receive said letter. The return receipt of the United States Post Office Department showing said letter was received by said juror, or by some person authorized by the United States Post Office Department to receive same for him, shall be deemed prima facie evidence that the juror actually received such notice. Acts 1937, 45th Leg., p. 678, ch. 339, § 1.

Effective 90 days after May 22, 1937, date of adjournment.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that the sheriff may summons jurors in capital cases in coun-

ties having a city with a population of twenty-five thousand (25,000) or more, according to the last preceding Federal Census, either in person, verbally, or by registered United States mail, as the trial judge in his discretion may order; and declaring an emergency. [Acts 1937, 45th Leg., p. 678, ch. 339.]

## CHAPTER EIGHT—TRIAL OF CAUSES

### 5. CASE TO JURY

#### Art. 2199. [1963-4] Disagreement as to evidence

If the jury disagree as to the statement of any witness, they may, upon applying to the Court, have read to them from the Court Reporter's notes that part of such witness' testimony on the point in dispute; but if there be no such Reporter, or if his notes cannot be read to the jury, the Court may cause such witness to be again brought upon the stand and the Judge shall direct him to repeat his testimony to the point in dispute, and no other, and as nearly as he can in the language used on the trial; and on their notifying the Court that they disagree as to any portion of a deposition or other paper not carried with them in their retirement, the Court may, in like manner, permit such portion of said

deposition or paper to be again read to the jury. As amended Acts 1939, 46th Leg., p. 213, § 1.

Effective Jan. 1, 1940. the act should take effect from and after  
Section 2 of the amendatory act of 1939 January 1, 1940.  
declared an emergency and provided that

## CHAPTER 11.—BILLS OF EXCEPTIONS AND STATEMENT OF FACTS.

### Art. 2237. 2058-67 When taken; rules

If either party during the progress of a cause is dissatisfied with any ruling, opinion or other action of the Court, he may except thereto at the time the said ruling is made, or announced or such action taken, and at his request time shall be given to embody such exceptions in a written bill. The preparation and filing of bills of exceptions shall be governed by the following rules:

1. No particular form of words shall be required in a bill of exception; but the objection to the ruling or action of the Court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible.

2. Where the statement of facts contains all the evidence requisite to explain the bill of exception evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.

2a. All objections to the admission or exclusion of evidence and exceptions to the ruling of the Court upon the admission or exclusion of evidence or other matters may be shown by the official stenographer's transcript of the evidence, known as a statement of facts in question and answer form, all as hereinafter provided in Article 2239, and no formal bill of exception to the admission or exclusion of evidence or to any of the Court's rulings shall be required where the matters complained of, the objections, the Court's rulings, and exceptions thereto clearly appear of record in said transcript of evidence, or statement of facts in question and answer form; provided, however, that in any case where such matters do not clearly appear of record the parties may, if they so desire, prepare and have approved and filed, as otherwise provided by law, a formal bill of exception.

3. The ruling of the court in the giving, refusing or qualifying of instructions to the jury shall be regarded as approved unless excepted to.

4. Where the ruling or other action of the Court appears otherwise of record, no bill shall be necessary to reserve an exception thereto; and all motions and answers thereto, the orders thereon and any exceptions shown in such orders shall, for the purpose of this Article, be considered a part of the record without the necessity of bills of exception, provided that if testimony is heard upon a motion, such testimony may be preserved only by bill of exception or in the statement of facts.

5. The party taking a bill of exception shall reduce the same to writing and present it to the Judge for his allowance and signature.

6. The Judge shall submit such bill to the adverse party or his counsel, if in attendance on the Court, and if found to be correct, the Judge shall sign it without delay and file it with the Clerk.

7. If the Judge finds such bill incorrect, he shall suggest to the party or his counsel, such corrections as he deems necessary therein, and if they are agreed to, he shall make such corrections, sign the bill and file it with the Clerk.

8. Should the party not agree to such corrections, the Judge shall return the bill to him with his refusal indorsed thereon, and shall prepare, sign and file with the Clerk such bill of exception, as will, in his opinion, present the ruling of the court as it actually occurred.

9. Should the party be dissatisfied with said bill filed by the Judge, he may, upon procuring the signatures of three respectable by-standers, citizens of this State, attesting to the correctness of the bill as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of said bill and to be considered as a part of the record relating thereto.

10. This Act shall not serve to repeal other laws regarding or dispensing with exceptions or bills of exception. As amended Acts 1939, 46th Leg., p. 215, § 1.

Effective January 1, 1940. the Act should take effect from and after  
 Section 2 of the amendatory Act of 1939 January 1, 1940.  
 declared an emergency and provided that

#### Art. 2241a. Return of bills of exceptions and statement of facts by attorney

Whenever within the sixty (60) days that are provided by law for filing bills of exceptions and statements of fact in the trial court, the appellant or his attorney shall present bills of exceptions and statements of fact to the appellee or his attorney for the purpose of procuring an agreement thereto as provided in Articles 2239 and 2240, it shall be the duty of the appellee and his attorney to return to the appellant or his attorney the bills of exceptions and statements of fact within ten (10) days after having received said bills of exceptions and statements of fact, with his approval or disapproval of the same. The failure of the attorney for appellee to return such statements of fact or bills of exceptions within such ten-day period shall entitle the appellant to have such bills of exceptions and statements of fact approved by the court without having first obtained the approval thereof by the attorney for appellee. As amended Acts 1939, 46th Leg., p. 214, § 1.

Section 2 of the amendatory Act of 1939 makes this act effective January 1, 1940.

#### Art. 2246. 2073 Time for filing

When an appeal is taken from a judgment rendered in a civil cause tried in either the District Court, County Court, or County Court at Law, the party appealing shall have fifty (50) days after final judgment or order overruling motion for new trial, if such motion is filed, or perfection of writ of error, within which to prepare and file his statement of facts and bills of exception in the Trial Court.

Sec. 2. Upon application of the party appealing, the Judge of the Court may, in termtime or vacation, for good cause shown, extend the time for filing such statement of facts and bills of exception; but the time shall not be extended in any case so as to delay the filing thereof beyond the time for filing the transcript, bills of exceptions, and statement of facts in the Court of Civil Appeals, as prescribed by law, or as such time has been extended by said Court. As amended Acts 1939, 46th Leg., p. 217, § 1.

Section 2 of the amendatory act of 1939 makes this act effective Jan. 1, 1940; section 3 declared an emergency and provided that the act should take effect from and after its passage.

### CHAPTER 13.—GENERAL PROVISIONS

#### 3. OFFICIAL COURT REPORTER

Art.		Art.	
2326d.	Salaries of official shorthand reporters in districts composed of four counties [New].	2326f.	Salary of court reporter in certain districts [New].
2326e.	Salaries of reporters in certain counties [New].	2327b.	County court reporter in counties of 40,905 to 41,000 population [New].
		2327b-1.	County court reporter in counties of 22,100 to 22,500 population [New].

#### 2. RECEIVERS

Art. 2317. 2153, 1491 Receivership of corporation limited; certain corporations excepted

No corporation shall be administered in any court more than three years from the date of such appointment except as hereinafter provided; and within three years such court shall wind up the affairs of such corporation, unless prevented by litigation, or unless, at said time, the Receiver shall be conducting and operating the affairs of such corporation as a going concern, in which event the court, upon application, by proper order entered upon the minutes, after hearing held after due notice to all attorneys of record, may extend, from time to time, such receivership for such term and upon such conditions as in its judgment the best interests of all parties concerned may require; provided, that no continuance of a receivership shall be for more than five years additional to the original three years; and provided further, that corporations organized and existing under Section 68 of Article 1302, Chapter 1 of Title 32, and under Title 112, of Revised Civil Statutes of Texas, shall not be subject to the above provision limiting receiverships to five additional years, but as to such exempted corporations, the time in which to close any such receivership shall be determined by the court, and it may extend the same, from time to time, for such additional period or periods of time as it may determine. As amended Acts 1937, 45th Leg., p. 222, ch. 119, § 1.

Effective April 8, 1937.

Section 2 of the amendatory act of 1937

declared an emergency making the act effective on and after its passage.

#### 3. OFFICIAL COURT REPORTER

Art. 2323. 1928 Deputy reporter

This article is not repealed in any way by Acts 1937, 45th Leg., p. 576, ch. 286, § 1, see article 2327a, post.

Art. 2326a. Expenses and manner of payment

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Provided that in districts containing four (4) counties only with the population totaling in the aggregate not less than one hundred thousand (100,000) population and not more than one hundred thousand, one hundred and fifty (100,150) population, according to the last preceding Federal Census, the expenses herein allowed shall never exceed the sum of Six Hundred Dollars (\$600) per annum. Added Acts 1939, 46th Leg., Spec.L., p. 622, § 1.

Effective May 1, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

This article is not repealed in any way by Acts 1937, 45th Leg., p. 576, ch. 286, § 1, see article 2327a, nor by Acts 1937, 45th Leg., p. 73, ch. 44, see article 2326d.

**Art. 2326d. Salaries of official shorthand reporters in districts composed of four counties**

The salary of the official shorthand reporter in each judicial district composed of four counties in this State, with the population of said four counties totalling in the aggregate, in excess of one hundred thousand (100,000) population according to the last preceding Federal Census, and which alone constitute one or more judicial districts, in addition to the compensation of transcript fees as provided by law, shall be Three Thousand Dollars (\$3,000.00) per annum to be paid as the salaries of other court reporters are paid.

It is further expressly provided that nothing herein shall be construed as repealing Article 2326-A of 1925 Revised Civil Statutes of Texas as amended by Acts 1929, 41st Legislature, Chapter 56, page 112. Acts 1937, 45th Leg., p. 73, ch. 44, § 1.

Effective March 16, 1937.

Section 2 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

**Art. 2326e. Salaries of reporters in certain counties**

Section 1. That the official shorthand reporter of each District Court, Criminal District Court and County Court-at-Law in each county in the State of Texas having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding or any future Federal Census, shall receive a salary of Thirty-six Hundred Dollars (\$3600) per annum in addition to the compensation for transcript fees as provided by law. Said salary shall be paid monthly on approval of the Judge of such court out of the General Fund of the county. Acts 1937, 45th Leg., p. 1177, ch. 469.

Sec. 2. That the official shorthand reporter of each District Court, Criminal District Court, and County Court-at-Law in each county in the State of Texas having a population of more than two hundred and ninety thousand (290,000) and less than three hundred and twenty-five thousand (325,000) inhabitants, according to the last preceding or any future Federal Census, shall receive a salary of Thirty-six Hundred Dollars (\$3600) per annum in addition to the compensation for transcript fees as provided by law. Said salary shall be paid monthly on approval of the Judge of such Court out of the Jury Fund of the county. As amended Acts 1939, 46th Leg., Spec.L., p. 623, § 1.

Effective May 11, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the

act should take effect from and after its passage.

Sec. 3. If any section, sentence, clause, phrase or part of this Act be held invalid for any reason, such invalidity shall not affect the remainder of the Act.

Sec. 4. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. Acts 1937, 45th Leg., p. 1177, ch. 469.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act fixing the compensation of official shorthand reporters in District Courts, Criminal District Courts and County Courts-at-Law in all counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants,

according to the last preceding or any future Federal Census and in counties having a population of more than two hundred and ninety thousand (290,000) and less than three hundred and twenty-five thousand (325,000) inhabitants according to the last preceding or any future Federal Census; providing methods of payment; providing that if any section, paragraph, sentence, clause, phrase or part of this

Act be invalid, such invalidity shall not affect the remainder thereof; repealing all laws and parts of laws in conflict to the extent of such conflict only; and declaring an emergency. Acts 1937, 45th Leg., p. 1177, ch. 469.

#### Art. 2326f. Salary of court reporter in certain districts

The salary and expenses of the official Court Reporter in each Judicial District in this State having four (4) or more counties, and having a population in excess of one hundred seven thousand five hundred (107,500) and/or any District having a population of eighty-six thousand nine hundred thirty-two (86,932), according to the latest United States Census may, within the discretion of the Commissioners' Court, be paid out of the Jury fund. Acts 1939, 46th Leg., Spec.L., p. 620, § 1.

Effective May 28, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

##### Title of Act:

An Act providing that the salary and expenses of the official Court Reporter in each Judicial District in this State having four (4) or more counties, and having a popula-

tion in excess of one hundred seven thousand five hundred (107,500) and/or any District having a population of eighty-six thousand nine hundred thirty-two (86,932), according to the latest United States Census may, within the discretion of the Commissioners' Court, be paid out of the Jury fund; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 620.

#### Art. 2327a. Salary in certain counties

In each Judicial District of this State composed of one county only, and in which county there is only one District Court, and also in each Judicial District composed of two (2) or more counties, and also in each Judicial District composed of one county, which county composes also a portion of another Judicial District, the salary of the official Court Reporter shall be Twenty-seven Hundred Dollars (\$2700) per annum, in addition to the compensation for transcript fees and allowances for expenses now provided by law; said salary to be paid monthly by the Commissioners Court of the county or counties, out of the General Fund of the county or counties, upon the certificate of the District Judge; provided that in any Judicial District composed of two (2) or more counties said salary shall be paid by such counties of the District in proportion to the number of weeks provided by law for holding Court in the respective counties in the District; and provided that in a District wherein in any county the term may continue until the business is disposed of, each county shall pay in proportion to the time Court is actually held in such county; provided, however, that in Hays County, Texas, the Court Reporter shall be paid out of the Jury Fund of said county upon the certificate of the Judge of the District Court of said county.

Provided further that nothing in this Act shall be construed as in any way repealing Article 2323 of the Revised Civil Statutes of 1925, nor Chapter 56 of the General Laws of the Regular Session of the Forty-first Legislature, 1929,<sup>1</sup> nor shall this Act in any way repeal or amend any local or special law passed at the Regular or First and Second Called Sessions of the Forty-first Legislature of 1929. As amended Acts 1937, 45th Leg., p. 576, ch. 286, § 1.

<sup>1</sup> Article 2326a.

The Amendatory Act of 1937 added to this article the proviso with regard to Hays County.

Acts 1937, 45th Leg., p. 576, ch. 286, became law without Governor's signature and was filed May 5, 1937.

Section 2 of the amendatory act of 1937 declared an emergency making the act effective on and after its passage. It does not record the Governor's approval.

Art. 2327b. County court reporter in counties of 40,905 to 41,000 population

Section 1. In counties having a population of not less than forty thousand nine hundred and five (40,905) and not more than forty-one thousand (41,000) according to the last preceding Federal Census, there shall be and there is hereby created and established the office of court reporter of the County Court; such office to be called and known as the official Court Reporter of the County Court.

Sec. 2. In said counties the Judge of the County Court shall have the power to appoint an official court reporter for the County Court who shall possess the same qualifications, perform the same duties, as is now required of court reporters of the District Court and who shall hold the office of Court Reporter of the County Court for a term of two years from the date of such appointment or until his successor shall be appointed and qualified.

Sec. 3. Said official Court Reporter of said County Court shall be paid a salary of not to exceed Fifteen Hundred (\$1500.00) Dollars per year payable in twelve equal monthly payments on the first of each month during the year, out of the General Fund of the County.

Sec. 4. The Clerk of the County Court shall tax as costs the sum of Three (\$3.00) Dollars in each and every civil case filed in said court, on and after the passage and approval of this Act, in which an answer is filed. Acts 1937, 45th Leg., 2nd C.S., p. 1873, ch. 8.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that in counties having a population of not less than forty thousand nine hundred and five (40,905) and not more than Forty-one thousand (41,000) according to the last preceding Federal Census, the County Judge may appoint a court stenographer to be called

and known as the official County Court Reporter of the County Court; to define and prescribe the duties of such court reporter, and fix the compensation and tenure of office; prescribing the fund from which the salary is to be paid and prescribing the taxing of costs in civil suits in which answer is filed, and declaring an emergency. Acts 1937, 45th Leg., 2nd C. S., p. 1873, ch. 8.

Art. 2327b—1. County court reporter in counties of 22,100 to 22,500 population

Section 1. In counties having a population of not less than twenty-two thousand, one hundred (22,100) and not more than twenty-two thousand, five hundred (22,500), according to the last preceding Federal Census, there shall be and there is hereby created and established the office of Court Reporter of the County Court; such office to be called and known as the Official Court Reporter of the County Court.

Sec. 2. In said counties the Judge of the County Court shall have the power to appoint an Official Court Reporter for the County Court, who shall possess the same qualifications, perform the same duties as are now required of Court Reporters of the District Court, and who shall hold the office of Court Reporter of the County Court for a term of two (2) years from the date of such appointment, or until his successor shall be appointed and qualified.

Sec. 3. Provided, however, that the Commissioners Court of the county wherein such appointment is made shall approve the person appointed by the Judge of the County Court of said county.

Sec. 4. Said Official Court Reporter of such county shall be paid a salary of not to exceed Twelve Hundred Dollars (\$1200) per year, payable in twelve (12) equal monthly installments, on the first of each month during the year, out of the Jury Fund of the county. The amount



of salary to be paid said Official Court Reporter shall be fixed by the Commissioners Court of such county. Acts 1939, 46th Leg., Spec.L., p. 616.

Effective April 20, 1939.

Section 5 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing that in counties having a population of not less than twenty-two thousand, one hundred (22,100) and not more than twenty-two thousand, five hundred (22,500), according to the last preceding Federal Census, the County Judge may

appoint a Court Stenographer to be called and known as the Official Court Reporter of the County Court; providing that the person appointed by said County Judge shall be approved by the Commissioners Court of the county in which appointed; defining and describing the duties of such Court Reporter and fixing the compensation and tenure of office; prescribing the fund for which the salary is to be paid; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 616.

**TITLE 44—COURTS—COMMISSIONERS**

**1. COMMISSIONERS COURT**

- Art. 2350(5). Salaries of commissioners in counties of 49,100 to 51,000 [New].
- 2. POWERS AND DUTIES**
- 2351a. Fire fighting equipment; purchase authorized in counties of 300,000 to 350,000 population [New].
- 2351b—1. Fire protection; counties of less than 20,000 population authorized to contract for with municipalities [New].
- 2351b—2. Aid to State and Federal agencies [New].
- 2352c. County tax for advertising in counties of 40,000 to 50,000 population; Board of County Development [New].

- Art. 2368d. Validation of funding and refunding securities issued by Commissioners' Court or Cities and Towns [New].
- 2372e—1. Renting office space for administration of unemployment relief in counties of 48,900 to 49,000 population [New].
- 2372e—2. Renting office space for administration of unemployment relief; cooperation with State and Federal agencies [New].
- 2372f. Pick up trucks, purchasing and maintaining in certain counties [New].
- 2372g. Payment of salaries of employees in case of illness in certain counties [New].

**1. COMMISSIONERS COURTS**

**Art. 2350. County commissioners salaries**

\* \* \* \* \*

Provided that in any county in this State having a population of less than twenty thousand (20,000) inhabitants and which has a tax valuation of not less than Seventeen Million (\$17,000,000.00) Dollars and not exceeding Twenty-five Million (\$25,000,000.00) Dollars according to the last approved tax roll and with a total area of not less than nine hundred fifty (950) square miles and not exceeding nine hundred eighty (980) square miles, the compensation of each County Commissioner shall be Twenty-four Hundred (\$2,400.00) Dollars per annum; and in counties having a population of not less than fifteen thousand five hundred fifty (15,550) nor more than fifteen thousand five hundred sixty (15,560) according to the last preceding Federal Census, and having an assessed valuation of not less than Twelve Million (\$12,000,000.00) Dollars according to the last approved tax rolls, the salary of each County Commissioner shall be One Thousand Eight Hundred (\$1,800.00) Dollars per annum, to be paid in twelve (12) equal installments as herein provided for in Article 2350 H; and in any county in this State having a population of not less than twenty-nine thousand two hundred ten (29,210) and not more than twenty-nine thousand six hundred thirty (29,630) according to the last preceding Federal Census, the salary of each County Commissioner shall be One Thousand Eight Hundred (\$1,800.00) Dollars per annum, to be paid in twelve (12) equal installments as herein provided for in Article 2350 H. As amended Acts 1939, 46th Leg., Spec.L., p. 566, §§ 1, 2.

Effective March 15, 1939.  
 Section 3 of the amendatory act of 1939 the act should take effect from and after declared an emergency and provided that its passage.

**Art. 2350(3). Repeals; salary of precinct commissioner in counties of 14,588 to 14,800**

That all laws, both General and Special, or parts of laws, both General and Special, in conflict with the foregoing Act, be and the same are hereby expressly repealed; provided, however, that in all counties having a population of not less than fourteen thousand, five hundred

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

and fifty (14,550) nor more than fourteen thousand, eight hundred (14,800), according to the last available Federal Census, as same now exists or may hereafter exist, each Precinct Commissioner shall be entitled to receive a salary not in excess of Three Thousand Dollars (\$3,000) per annum, payable in equal monthly installments, and provided that in all counties having a population of not less than ninety-eight thousand (98,000), and not more than one hundred and twenty-five thousand (125,000), according to the last available Federal Census and each available Census thereafter, and a valuation of over Sixty Million Dollars (\$60,000,000) according to the last approved tax roll for county purposes, each Precinct Commissioner shall be entitled to receive a salary not in excess of Three Thousand Dollars (\$3,000) per annum, payable in equal monthly installments. As amended Acts 1937, 45th Leg., p. 393, ch. 195, § 1; Acts 1939, 46th Leg., Spec.L., p. 570, § 2.

Effective April 20, 1939.

Section 1 of the amendatory act of 1939, cited to the text, relating to salaries and expenses of county commissioner in counties of 77,600 to 131,000 population appears under article 2350m in note.

Sec. 3 reads as follows: "If any section, clause, sentence, or other part of this Act

shall for any reason be declared unconstitutional that shall not affect in any way the constitutionality of the remaining provisions hereof."

Section 4 repeals all conflicting laws and parts of laws; section 5 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2350(4). Salaries of commissioners in counties of 10,370 to 10,475 and other counties

In all counties in this State having a population of not less than ten thousand, three hundred and seventy (10,370) and not more than ten thousand, four hundred and seventy-five (10,475) according to the last preceding Federal Census, County Commissioners shall receive an annual salary of One Thousand, Two Hundred Dollars (\$1,200), payable in twelve (12) equal monthly installments out of such funds belonging to such counties as is now provided by law; in all counties having a population of not less than twenty-four thousand and sixty-five (24,065) and not more than twenty-four thousand, one hundred and eighty-five (24,185) according to the last preceding Federal Census, County Commissioners shall receive an annual salary of One Thousand, Eight Hundred Dollars (\$1,800) payable in twelve (12) equal monthly installments out of such funds belonging to such counties as is now provided by law. In all counties having a population of not less than nine thousand, seven hundred and fifteen (9,715) and not more than ten thousand, and twenty (10,020) according to the last preceding Federal Census, County Commissioners shall receive an annual salary of Twelve Hundred Dollars (\$1200) payable in twelve (12) equal installments out of such funds belonging to such counties as is now provided by law. Providing that the salaries and compensation of each of the County Commissioners in counties having a taxable valuation of not less than Forty-seven Million Dollars (\$47,000,000) according to the last available approved tax rolls for such counties, and having a population of not more than seven thousand, eight hundred and forty-five (7,845) according to the last Federal Census, shall be not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in equal monthly installments. Providing that the salaries and compensation of the County Commissioners in counties with a taxable valuation of not less than Thirty Million Dollars (\$30,000,000), and not more than Forty Million Dollars (\$40,000,000), according to the tax rolls as prepared by the Assessor and Collector of Taxes of the respective counties for the preceding year, and having within their boundaries two (2) incorporat-

ed cities of more than thirteen thousand, five hundred (13,500) population each, according to the last preceding Federal Census, shall be not to exceed Two Thousand, Four Hundred Dollars (\$2,400) annually, payable in equal monthly installments; and in addition to their regular salaries each of such Commissioners shall receive their actual and necessary expenses incurred in the conduct of their offices in an amount not to exceed Fifty Dollars (\$50) per month, payable out of the Road and Bridge Fund of such counties on sworn claims, and approved by the County Auditor of such counties. Providing that in all counties in this State having a population of not less than forty-one thousand (41,000) and not more than forty-two thousand (42,000) according to the last preceding Federal Census, the County Commissioners shall, in addition to their regular salaries as now provided by law, receive their actual and necessary expenses incurred in the conduct of their offices in an amount not to exceed Fifty Dollars (\$50) per month, payable out of the Road and Bridge Fund of such counties on sworn claims and approved by the County Auditor of such counties. As added Acts 1937, 45th Leg., p. 565, ch. 277, § 1; amended Acts 1937, 45th Leg., 2nd C.S., p. 1881, ch. 13, § 1; Acts 1939, 46th Leg., Spec.L., p. 562, § 1.

Effective Feb. 10, 1939.

Section 2 of the amendatory Act of 1939 the Act should take effect from and after declared an emergency and provided that its passage.

#### Art. 2350(5). Salaries of commissioners in counties of 49,100 to 51,000

In all counties in this State having a population of not less than forty-nine thousand, one hundred (49,100) and not more than fifty-one thousand (51,000) according to the last preceding Federal Census, each County Commissioner, in addition to his regular salary as provided by Article 2350, shall be entitled to an allowance not to exceed the sum of Fifty Dollars (\$50) per month, payable out of the Road and Bridge Fund for each Commissioner, in payment of his traveling, necessary and other legitimate expenses incident to the discharge of his official duties. All such claims shall be verified by such Commissioner and approved by the County Auditor and Commissioners Court. Added Acts 1939, 46th Leg., Spec.L., p. 583, § 1.

Effective May 19, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2350d. Salary in certain counties

In every County in this State, having a population of not less than seventeen thousand (17,000) and not more than seventeen thousand, one hundred (17,100), according to the last available United States Census, the compensation of each County Commissioner, so long as the taxable values in said County shall exceed the sum of Six Million, Eight Hundred Thousand Dollars (\$6,800,000) for the next preceding year, shall be Eighteen Hundred Dollars (\$1800) per year, to be paid in equal monthly installments, fifty (50) per cent of which amount shall be paid out of the General Fund of the County, and fifty (50) per cent out of the Road and Bridge Fund of the County; provided that when such taxable values for the next preceding year shall fall below said sum, the salary of each County Commissioner shall be as provided in Article 2350 of the Revised Statutes of 1925. As amended Acts 1937, 45th Leg., p. 171, ch. 87, § 1.

Section 2 of the amendatory act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

## Art. 2350m. Salaries and expenses in other counties

## Counties of 2,048-2,218

Acts 1937, 45th Leg., p. 223, ch. 120, reads as follows:

"Section 1. That the salaries and compensation of each of the County Commissioners in Counties with the population of not less than two thousand forty-eight (2048) inhabitants, nor more than two thousand, two hundred eighteen (2218) inhabitants, according to the last Federal Census as to the population or hereafter may be, shall be Twelve Hundred Dollars (\$1200.00) per annum, payable in equal monthly installments of One Hundred Dollars (\$100.00).

"Sec. 2. The salaries herein above stipulated shall be paid in whole or in part from either the Road and Bridge Fund of the County or the General Fund of the County."

Section 3 repeals all conflicting laws and parts of laws.

## Counties of 3,300 to 3,400; 10,399 to 10,499

Acts 1939, 46th Leg., Spec.L., p. 573, § 1, reads as follows:

"In all counties in this State having a population of not less than three thousand three hundred (3,300) and not more than three thousand four hundred (3,400), according to the last preceding Federal Census, and in all counties having a population of not less than ten thousand three hundred ninety-nine (10,399), and not more than ten thousand four hundred ninety-nine (10,499), according to the last preceding Federal Census, the Commissioners' Court in such counties is hereby authorized to allow each Commissioner the sum of Fifty (\$50.00) Dollars per month for traveling expenses when traveling in the discharge of his official duties."

Effective May 3, 1939.

Counties of 4,637 to 4,700; 5,660 to 5,675; 6,310 to 6,325; 8,590 to 8,625; 12,150 to 12,200; 18,430 to 18,450; 40,900 to 40,905

Acts 1939, 46th Leg., Spec.L., p. 574, § 1, reads as follows:

"Any county in this State having a population of not less than four thousand, six hundred and thirty-seven (4,637) and not more than four thousand, seven hundred (4,700), any county having a population of not less than five thousand, six hundred and sixty (5,660) and not more than five thousand, six hundred and seventy-five (5,675), any county having a population of not less than six thousand, three hundred and ten (6,310) and not more than six thousand, three hundred and twenty-five (6,325), any county having a population of not less than eight thousand, five hundred and ninety (8,590), and not more than eight thousand, six hundred and twenty-five (8,625), any county having a population of not less than twelve thousand, one hundred and fifty (12,150) and not more than twelve thousand, two hundred (12,200), any county having a population of not less than eighteen thou-

sand, four hundred and thirty (18,430), and not more than eighteen thousand, four hundred and fifty (18,450), and any county having a population of not less than forty thousand, nine hundred (40,900) and not more than forty thousand, nine hundred and five (40,905) inhabitants, according to the last preceding Federal Census, are hereby authorized to allow each County Commissioner the sum of Twenty-five Dollars (\$25) per month for traveling expenses while on official business, which said sum shall be paid out of the Road and Bridge Fund of said counties."

Effective 90 days after June 21, 1939, date of adjournment of Legislature.

Counties of 7,700 to 7,800; 12,725 to 12,825; 17,560 to 17,590; 23,650 to 23,700; 24,200 to 24,275

Acts 1939, 46th Leg., Spec.L., p. 575, § 1, reads as follows:

"In any county in this State containing a population of not less than seven thousand, seven hundred (7,700) and not more than seven thousand, eight hundred (7,800); and counties having a population of not less than twelve thousand, seven hundred and twenty-five (12,725) nor more than twelve thousand, eight hundred and twenty-five (12,825); and counties having a population of not less than seventeen thousand, five hundred and sixty (17,560) nor more than seventeen thousand, five hundred and ninety (17,590); and counties having a population of not less than twenty-three thousand, six hundred and fifty (23,650) nor more than twenty-three thousand, seven hundred (23,700); and counties having a population of not less than twenty-four thousand, two hundred (24,200) nor more than twenty-four thousand, two hundred and seventy-five (24,275), according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each Commissioner not more than the sum of Thirty-five Dollars (\$35) per month to be paid out of the Road and Bridge Fund of each respective Commissioner's Precinct, for traveling expenses and depreciation on the automobile while used on official business only and/or in overseeing the construction and maintenance of the public roads of said counties. Each such Commissioner shall pay all expenses in the operation of such automobile and keep same in repair at his own expense, free of any other charge whatsoever to the county."

Effective March 31, 1939.

## Counties of 10,270-10,275

Acts 1939, 46th Leg., Spec.L., p. 564, reads as follows:

"Section 1. That the salaries and compensation of each of the County Commissioners in counties with a population of not less than ten thousand two hundred and seventy (10,270) inhabitants nor more than ten thousand two hundred and seventy-five (10,275) inhabitants, according to

the last Federal Census, as same now exists or may hereafter exist, and having an assessed valuation of not less than Seven Million Five Hundred Fifty-six Thousand (\$7,556,000.00) Dollars nor more than Seven Million Six Hundred Thousand (\$7,600,000.00) Dollars, according to the last approved tax rolls, as same now exists or may hereafter exist, the Commissioners' Court of the counties coming under the provisions of this Act shall have the right to fix the exact amount of said salary, which shall be not to exceed Eighteen Hundred (\$1800.00) Dollars per annum, payable in equal monthly installments of not to exceed One Hundred Fifty (\$150.00) Dollars.

"Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from either the Road and Bridge Fund of the county or the General Fund of the County.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby specifically repealed."

Filed without Governor's signature June 1, 1939.

Counties of 12,471 to 12,520

Acts 1939, 46th Leg., Spec.L., p. 576, relating to counties of 12,471 to 12,520, reads as follows:

"Section 1. That from and after the passage of this Act, in all counties having a population of not less than twelve thousand, four hundred and seventy-one (12,471), and not more than twelve thousand, five hundred and twenty (12,520), according to the last Federal Census, the County Commissioners may make such provisions for the payment of additional salaries to each County Commissioner in said counties, not exceeding Twenty-five Dollars (\$25) per month, same to be used for traveling expenses for such Commissioners in such counties; provided that the moneys hereinabove allocated shall be in addition to all sums now collected by said Commissioners in such counties, and the same shall be allowed and paid in the manner and in accordance with now existing laws governing the maintenance of the office of such County Commissioners in such counties.

"Sec. 2. All laws and parts of laws, both General and Special, in conflict herewith are hereby repealed to the extent of said conflict, and no further."

Effective March 18, 1939.

Counties of 13,600-13,700

Acts 1937, 45th Leg., p. 212, ch. 113, relating to counties of 13,600 to 13,700 reads as follows:

"Section 1. That the salaries and compensation of each of the County Commissioners in counties with a population of not less than thirteen thousand, six hundred (13,600) inhabitants, nor more than thirteen thousand, seven hundred (13,700) inhabitants, according to the last Federal Census as to the population or hereafter may be, shall be Twelve Hundred Dollars

(\$1200) per annum, payable in equal monthly installments of One Hundred Dollars (\$100).

"Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from either the Road and Bridge Fund of the county or the General Fund of the county.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby specifically repealed."

Counties of 14,901 to 14,920; 13,630 to 13,640  
Acts 1939, 46th Leg., Spec.L., p. 565, reads as follows:

"Section 1. That the salaries and compensation of each of the County Commissioners in counties with the population of not less than fourteen thousand, nine hundred and one (14,901) inhabitants nor more than fourteen thousand, nine hundred and twenty (14,920) inhabitants, according to the last Federal Census, as same now exists or may hereafter exist, and having an assessed valuation of not less than Seven Million, Four Hundred and Thirty-six Thousand Dollars (\$7,436,000), nor more than Eight Million Dollars (\$8,000,000), according to the last approved tax rolls, as same now exists or may hereafter exist, the Commissioners Court of the counties coming under the provisions of this Act shall have the right to fix the exact amount of said salary, which shall be not to exceed Eighteen Hundred Dollars (\$1800) per annum, payable in equal monthly installments of not to exceed one Hundred and Fifty Dollars (\$150).

"Sec. 1a. The salaries and compensation of each of the County Commissioners in counties with the population of not less than thirteen thousand, six hundred and thirty (13,630) inhabitants nor more than thirteen thousand, six hundred and forty (13,640) inhabitants, according to the last Federal Census, the Commissioners Court of the counties coming under the provisions of this Act shall have the right to fix the exact amount of said salary, providing the maximum shall not exceed Eighteen Hundred Dollars (\$1800) per annum, payable in equal monthly installments:

"Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from either the Road and Bridge Fund of the county or the General Fund of the county.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby specifically repealed."

Effective April 28, 1939.

Counties of 15,700 to 15,777

Acts 1939, 46th Leg., Spec.L., p. 577, § 1, reads as follows: "In all Counties in this State having a population of not less than fifteen thousand seven hundred (15,700), and not more than fifteen thousand seven hundred seventy-seven (15,777) according to the last preceding Federal Census, the Commissioners' Court in such Counties is hereby authorized to allow each Commissioner the sum of Forty (\$40.00) Dollars per month for traveling expenses when traveling in the discharge of his official duties."

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Effective 90 days after June 21, 1939, date of adjournment of Legislature.

**Counties of 17,500 to 17,575**

Acts 1939, 46th Leg., Spec.L., p. 578, § 1, reads as follows: "In counties of this State, having a population of not less than seventeen thousand five hundred (17,500) and not more than seventeen thousand five hundred seventy-five (17,575), according to the last preceding Federal Census, the Commissioners' Court is hereby authorized to allow each Commissioner, not to exceed the sum of Thirty (\$30.00) Dollars per month for traveling expenses while on official business, payable out of the Road and Bridge Fund or General Fund of such counties on verified claims, and approved by the County Auditor of such counties."

Effective 90 days after June 21, 1939, date of adjournment of Legislature.

**Counties of 17,600-17,700**

Acts 1937, 45th Leg., p. 392, ch. 194, relating to counties of 17,600 to 17,700 reads as follows:

"Section 1. In any county in this State having a population of not less than seventeen thousand, six hundred (17,600) and not more than seventeen thousand, seven hundred (17,700) and in any county in this State having a population of not less than seventy-seven thousand (77,000) and not more than seventy-seven thousand, one hundred (77,100) and in any county in this State having a population of not less than seventy-seven thousand, five hundred (77,500) and not more than seventy-seven thousand, six hundred (77,600), according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each Commissioner the sum of Fifty Dollars (\$50) per month for traveling expenses and depreciation on his automobile while on official business. Each such Commissioner shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county."

**Counties of 19,000-19,900**

Acts 1937, 45th Leg., p. 797, ch. 390, reads as follows:

"Section 1. In all counties in this State having an assessed valuation of not less than Sixteen Million Dollars (\$16,000,000) and not more than Seventeen Million Dollars (\$17,000,000), based upon the last approved tax roll, and whose population is not less than nineteen thousand (19,000) nor more than nineteen thousand, nine hundred (19,900) according to the last available United States Census, each County Commissioner shall be entitled to receive a salary not in excess of Twenty-one Hundred and Sixty Dollars (\$2160) per annum payable in equal monthly installments.

"Sec. 2. Provided, however, that in all counties with a population not less than twenty-four thousand, one hundred (24,100), and not more than twenty-four thousand, one hundred and seventy-five

(24,175), according to the last preceding Federal Census, each of the Commissioners in said counties shall receive in addition to the salaries fixed by law in such counties their actual and necessary expenses incurred in the conduct of their office in an amount not to exceed Fifty Dollars (\$50) per month, payable out of the Road and Bridge Fund of such counties on verified claims, and approved by the County Auditor of such counties.

"Sec. 3. All laws and parts of laws, General and Special, in conflict with this Act are hereby repealed."

**Counties of 19,150 to 19,175**

Acts 1939, 46th Leg., Spec.L., p. 567, reads as follows:

"Section 1. In all counties having a population of not less than nineteen thousand, one hundred and fifty (19,150) nor more than nineteen thousand, one hundred and seventy-five (19,175), according to the last preceding Federal Census, the salary of the County Commissioners shall be Eighteen Hundred Dollars (\$1800) per year, provided that such salary shall be paid in twelve (12) equal monthly installments, and providing further that seventy-five (75) per cent of such salary shall be paid from the County Road and Bridge Fund and twenty-five (25) per cent shall be paid from the General Fund of such counties; and in all counties having a population of not less than three thousand, five hundred and forty-eight (3,548) nor more than three thousand, five hundred and fifty-eight (3,558), according to the last preceding Federal Census, the salary of County Commissioners shall be Twelve Hundred Dollars (\$1200) per year, provided such salary shall be paid in twelve (12) equal monthly payments, and providing further that seventy-five (75) per cent of such salary shall be paid from the County Road and Bridge Fund and twenty-five (25) per cent shall be paid from the General Fund of such counties.

"Sec. 2. All laws or parts of laws in conflict with the provisions of this Act are hereby expressly repealed to the extent of such conflict."

Effective April 20, 1939.

**Counties of 22,100 to 22,500**

Acts 1939, 46th Leg., Spec.L., p. 579, § 1, reads as follows:

"In all counties in this State having a population of not less than twenty-two thousand, one hundred (22,100) nor more than twenty-two thousand, five hundred (22,500) according to the last preceding Federal Census, the Commissioners Court of such counties is hereby authorized to issue each Commissioner the sum of Fifty Dollars (\$50) per month for traveling expenses while on official business. Said money to be paid out of the General Funds of said counties."

Effective April 20, 1939.

**Counties of 22,642-22,650, 25,394-25,504, 27,239-27,400**

Acts 1937, 45th Leg., p. 571, ch. 282, effective May 5, 1937, purported to enact an

"Article to be designated as Article 2350m." It being a special and local Act, it is set out here and reads as follows: "In all counties in this State having a population of not less than twenty-seven thousand, two hundred and thirty-nine (27,239) and not more than twenty-seven thousand, four hundred (27,400), and in all counties in this State having a population of not less than twenty-two thousand, six hundred and forty-two (22,642) and not more than twenty-two thousand, six hundred and fifty (22,650), and counties having a population of not less than twenty-five thousand, three hundred and ninety-four (25,394) and not more than twenty-five thousand, four hundred and four (25,404), according to the last preceding Federal Census, the Commissioners Court of such county is hereby authorized to allow each Commissioner the sum of Twenty-five Dollars (\$25) per month for traveling expenses while on official business."

**Counties of 27,250-27,490**

Acts 1939, 46th Leg., Spec.L., p. 580, reads as follows:

"Section 1. That from and after the effective date of this Act in all counties with a population, according to the last Federal Census, of not less than twenty-seven thousand, two hundred and fifty (27,250) and not more than twenty-seven thousand, four hundred and ninety (27,490), the County Commissioners of such counties shall, in addition to the salaries now being received, be paid an additional compensation of Twenty-Five Dollars (\$25) for expenses incurred in the upkeep of automobile and traveling expenses. Said compensation may be paid wholly or partly out of either the general fund or the road and bridge fund of the counties affected by this Act as the Commissioners Court of such counties may elect.

"Sec. 2. That this Act shall be deemed cumulative of all laws and parts of laws now in force in this State regarding salaries and/or compensation of County Commissioners."

Filed without Governor's signature June 1, 1939.

**Counties of 27,545 to 27,555**

Acts 1939, 46th Leg., Spec.L., p. 568, reads as follows:

"Section 1. In all counties having a population of not less than twenty-seven thousand, five hundred and forty-five (27,545) nor more than twenty-seven thousand, five hundred and fifty-five (27,555), according to the last preceding Federal Census, the salary of the County Commissioners shall be Eighteen Hundred Dollars (\$1,800) per year, provided that such salary shall be paid in twelve (12) monthly installments, said money to be paid out of the General Funds of said counties, and/or Road and Bridge Funds of the respective precincts served by said Commissioners.

"Sec. 2. All laws or parts of laws in conflict with the provisions of this Act are

hereby expressly repealed to the extent of such conflict."

Effective July 8, 1939.

**Counties of 30,017 to 30,200**

Acts 1939, 46th Leg., Spec.L., p. 569, § 1, reads as follows:

"In every county in this State having a population of not less than thirty thousand and seventeen (30,017) nor more than thirty thousand, two hundred (30,200) according to the last preceding Federal Census, the compensation of each County Commissioner, so long as the taxable values in said county shall exceed the sum of Seven Million Dollars (\$7,000,000) for the next preceding year, shall be Eighteen Hundred Dollars (\$1800) per year, to be paid in equal monthly installments of One Hundred and Fifty Dollars (\$150)."

Effective April 7, 1939.

**Counties of 34,000 to 34,200**

Acts 1939, 46th Leg., Spec.L., p. 581, § 1, reads as follows:

"In any county in this State containing a population of not less than thirty-four thousand (34,000) nor more than thirty-four thousand, two hundred (34,200), according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each Commissioner not to exceed the sum of Thirty-five Dollars (\$35) per month to be paid out of the Road and Bridge Fund of each such Commissioner's Precinct for traveling expenses and depreciation on the automobile while used on official business only and/or in overseeing the construction and maintenance of the public roads of said counties. Each such Commissioner shall pay all expenses in the operation of such automobile and keep same in repair at his own expense, free of any other charge whatsoever to the county."

Effective April 20, 1939.

**Counties of less than 35,000**

Acts 1937, 45th Leg., p. 453, ch. 230, relating to expenses in counties of less than 35,000 reads as follows:

"Section 1. Any county in this State having a population of less than thirty-five thousand (35,000) inhabitants, according to the last preceding Federal Census, and having an assessed property valuation exceeding Seventy Million Dollars (\$70,000,000) according to the approved tax rolls for the preceding year is hereby authorized to allow each County Commissioner the sum of Fifty Dollars (\$50) per month for traveling expenses within the county while on official business, which said sum shall be paid out of the Road and Bridge Fund of said county, and each Commissioner shall make under oath an itemized statement of his expenses for each month."

**Counties of 37,500 to 38,600**

Acts 1939, 46th Leg., Spec.L., p. 582, reads as follows:

"Section 1. In any county in this State having a population of not less than thirty-seven thousand, five hundred (37,500) and



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

not more than thirty-eight thousand, six hundred (38,600) inhabitants, according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each County Commissioner the sum of thirty-five Dollars (\$35) per month for traveling expenses while on official business, which said sum shall be paid out of the Road and Bridge Fund of said county."

Effective May 19, 1939.

Counties of 42,125-42,150

Acts 1937, 45th Leg., 1st C. S., reads as follows:

"Section 1. In any county in this State containing a population of not less than forty-two thousand, one hundred and twenty-five (42,125), nor more than forty-two thousand, one hundred and fifty (42,150), according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each Commissioner the sum of Twenty-five Dollars (\$25) per month for traveling expenses and depreciation on the automobile while used on official business in overseeing the construction and maintenance of the public roads of said counties. Each such Commissioner shall pay all expenses in the operation of such automobile and keep same in repair, free of any other charge to the county."

Counties with taxable valuation of  
47,100,000-48,100,000.

Acts 1937, 45th Leg., p. 869, ch. 427, reads as follows:

"Section 1. That the salaries and compensation of each of the County Commissioners in counties with a taxable valuation of not less than Forty-seven Million, One Hundred Thousand Dollars (\$47,100,000) nor more than Forty-eight Million, One Hundred Thousand Dollars (\$48,100,000) according to the tax rolls as prepared by the Tax Assessor of the respective counties for the current year of 1936, shall be not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in equal monthly installments.

"Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from either the Road and Bridge Fund of the county or the General Fund of the county.

"Sec. 3. All law or parts of laws in conflict herewith are hereby specifically repealed."

Counties of 64,000-65,000, 77,777-78,000

Counties having population of 77,777 to 78,000, and counties having population of 64,000 to 65,000: \$2,400. Acts 1933, 43rd Leg., 1st C.S., p. 181, ch. 64.

Counties of 74,000 to 76,000

Acts 1939, 46th Leg., Spec.L., p. 584, § 1, reads as follows:

"In any county in this State having a population of not less than seventy-four thousand (74,000) and not more than seventy-six thousand (76,000) according to the last preceding United States Census and not less than Forty-one Million Dollars (\$41,

000,000) and not more than Forty-five Million Dollars (\$45,000,000) taxable valuation according to the last available tax roll, the Commissioners Court of such county is hereby authorized to allow each Commissioner the sum of Fifty Dollars (\$50) per month for traveling expenses and depreciation on his automobile; each such Commissioner shall pay all expenses in the operation of his automobile and keep the same in repair free of any other charge to such county."

Effective April 7, 1939.

Counties of 77,600-88,000

Acts 1937, 45th Leg., p. 735, ch. 363, relating to counties of 77,600 to 88,000 population, reads as follows:

"Section 1. That the salaries and compensation of each of the County Commissioners in Counties with the population of not less than seventy-seven thousand, six hundred (77,600) inhabitants nor more than eighty-eight thousand (88,000) inhabitants, according to the last Federal Census, as same now exists or may hereafter exist, and having an assessed valuation of not less than Forty Million and One Dollars (\$40,000,001) nor more than Fifty Million Dollars (\$50,000,000), according to the last approved tax rolls, as same now exists or may hereafter exist, shall be Three Thousand Dollars (\$3,000), per annum, payable in equal monthly installments of Two Hundred and Fifty Dollars (\$250).

"Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from either the Road and Bridge Fund of the County or the General Fund of the County.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby specifically repealed."

Counties of 77,600 to 131,000

Acts 1937, 45th Leg., p. 735, ch. 363, § 1, as amended Acts 1939, 46th Leg., Spec.L., p. 570, § 1, reads as follows:

"The salaries and compensation of each of the County Commissioners in counties with a population of not less than seventy-seven thousand, six hundred (77,600) inhabitants nor more than one hundred and thirty-one thousand (131,000) inhabitants, according to the last Federal Census, as same now exists or may hereafter exist, and having an assessed valuation of not less than Forty-five Million and One Dollars (\$45,000,001) nor more than Sixty-three Million, Five Hundred Thousand Dollars (\$63,500,000), according to the last approved tax rolls, as same now exists or may hereafter exist, shall be Three Thousand Dollars (\$3,000) per annum, payable in equal monthly installments of Two Hundred and Fifty Dollars (\$250)."

Effective April 20, 1939.

Counties With Taxable Valuation of  
\$51,100,000-51,400,000

Acts 1939, 46th Leg., Spec.L., p. 572, reads as follows:

"Section 1. That the salaries and compensation of each of the County Commission-

ers in counties with a taxable valuation for county purposes of not less than Fifty-one Million, One Hundred Thousand Dollars (\$51,100,000) nor more than Fifty-one Million, Four Hundred Thousand Dollars (\$51,400,000) according to the tax rolls as prepared by the Tax Assessor-Collector of the respective counties for the current year of 1938, shall be not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, such salary to be fixed by the Com-

missioners Court, payable in equal monthly installments.

"Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from either the Road and Bridge Fund of the county or the General Fund of the county.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby specifically repealed."

Effective May 19, 1939.

## 2. POWERS AND DUTIES

### Art. 2351. 2241, 1537, 1514 Certain powers specified

16. Said Court shall have the authority to use county road machinery and funds from the General Fund or Road and Bridge Funds in cleaning streams and in aiding flood control when such improvements are deemed to be of aid of the county in the maintenance and the building of county roads, in counties having a population of from nineteen thousand, eight hundred and fifty (19,850) to nineteen thousand, eight hundred and ninety-five (19,895) according to the last Federal Census: Added Acts 1939, 46th Leg., Spec.L., p. 588, § 1.

Effective June 30, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Composition with creditors under Federal Bankruptcy Laws, see art. 1024b.

Employment of relief investigators in certain counties, see art. 5221b-23.

### Art. 2351a. Fire fighting equipment; purchase authorized in counties

The Commissioners Court in counties having a population of more than three hundred thousand (300,000) and less than three hundred and fifty thousand (350,000) inhabitants in accordance with the last preceding Federal Census, and in counties having a population of more than forty-eight thousand, five hundred (48,500) and less than forty-nine thousand (49,000) inhabitants and in counties having a population of not less than twenty-two thousand and eighty-nine (22,089) nor more than twenty-two thousand, one hundred (22,100) inhabitants in accordance with the last preceding Federal Census, shall have the authority to purchase fire trucks and other fire-fighting equipment by first advertising and receiving bids thereon as provided by law, to be used for the protection and preservation of bridges, county shops, county warehouses, and other property located without the limits of any incorporated city or town. As amended Acts 1939, 46th Leg., Spec.L., p. 587, § 1.

Effective April 18, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that

the Act should take effect from and after its passage.

### Contracts with centrally located municipality for operation and maintenance

Sec. 2. The Commissioners Courts in such counties are empowered and authorized to enter into contracts with any centrally located municipality in the county for the operation and maintenance of said fire trucks and other fire-fighting equipment on such terms as the Commissioners Court may deem proper and expedient.

### Provisions cumulative; partial invalidity

Sec. 3. The provisions of this Act are cumulative of all other laws other than special laws and if any section, subdivision, paragraph, sen-

tence, or clause of this Act be held unconstitutional, the remaining portions thereof shall be valid. Acts 1937, 45th Leg., p. 1127, ch. 453.

Effective June 8, 1937.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing and empowering the Commissioners Court in counties having a population of more than three hundred thousand (300,000) and less than three hundred and fifty thousand (350,000) inhabitants, according to the last preceding Federal Census, to purchase fire trucks and other fire-fighting equipment for the protection and preservation of bridges, warehouses, shops, and other property located

without the limits of any incorporated city or town; authorizing and empowering the Commissioners Court to enter into contracts with any centrally located city in the county for the operation and maintenance of any such fire trucks and equipment; providing that the provisions of this Act are cumulative of all of the laws other than special laws; providing that in the event any section, subdivision, paragraph, sentence, or clause be held unconstitutional, that the remaining portions thereof shall be valid, and declaring an emergency. Acts 1937, 45th Leg., p. 1127, ch. 453.

#### Art. 2351b—1. Fire protection; counties of less than 20,000 population authorized to contract for with municipalities

The Commissioners Courts in counties having a population of less than twenty thousand (20,000), according to the last preceding Federal Census, and a property valuation of more than One Hundred Million Dollars (\$100,000,000), according to the last approved county tax rolls, are authorized and empowered to enter into contracts and agreements with the governing bodies of municipalities within such counties for the purpose of furnishing fire protection within such counties, but outside the corporate limits of such municipalities, and to make appropriations for paying such municipalities for furnishing such fire protection. Acts 1939, 46th Leg., Spec.L., p. 586, § 1.

Effective April 5, 1939.

Section 2 of the Act of 1939 read as follows: "The provisions of this Act are cumulative of all other laws other than special laws, and if any section, subdivision, paragraph, sentence, or clause of this Act be held unconstitutional, the remaining portions thereof shall be valid."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing and empowering the Commissioners Courts in counties having a population of less than twenty thousand

(20,000) according to the last preceding Federal Census, and a property valuation of more than One Hundred Million Dollars (\$100,000,000), according to the last approved county tax rolls, to enter into contracts and agreements with the governing bodies of municipalities within said counties for the purpose of furnishing fire protection in such counties outside of the corporate limits of said municipalities and to make appropriations for paying municipalities for such services; making the Act cumulative; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 586.

#### Art. 2351b—2. Aid to State and Federal agencies

From and after the date of passage of this Act the Commissioners Courts in all counties having a population of not less than twenty-two thousand and fifty (22,050) and not more than twenty-three thousand (23,000), according to the last preceding Federal Census, shall have the power and authority to provide for facilities and such financial aid as the said Commissioners Courts may deem necessary to Federal or State government agencies and bureaus having activities or maintaining projects within the county in which the said Commissioners Court is located. Acts 1939, 46th Leg., Spec.L., p. 585, § 1.

Effective May 17, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing that Commissioners

Courts in certain counties shall have the power to provide facilities and financial aid to government agencies and bureaus having activities within the county; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 585.

Art. 2352c. County tax for advertising in counties of 40,000 to 50,000 population; Board of County Development

Section 1. In all counties in this State having a population of not less than forty thousand (40,000) inhabitants and not more than fifth thousand (50,000) inhabitants, and containing a city having a population of not less than thirty thousand (30,000) inhabitants nor more than forty thousand (40,000) inhabitants, as shown by the last preceding Federal Census, a direct tax of not over five cents (5¢) on the valuation of One Hundred Dollars (\$100) may be authorized and levied by the Commissioners Court of such county, for the purpose of advertising and promoting the growth and development of said county and its county seat; provided that before the Commissioners Court of any such counties shall be authorized to levy any tax for such purpose, the qualified tax-paying voters of the county shall by a majority vote authorize the Commissioners Court to thereafter levy annually a tax not to exceed five cents (5¢) on the one hundred dollars assessed valuation.

Sec. 2. The amount of money collected from such levy of taxes by the Commissioners Court of any such county shall be paid to the Board of County Development in twelve (12) monthly installments as collected. All moneys received by the Board of County Development from such tax shall be expended only for the purposes authorized by this Act, and such Board shall annually render an itemized account to the County Auditor of all receipts and disbursements.

Sec. 3. There is hereby created in such counties as may vote in favor of this tax a Board of County Development, which shall devote its time and efforts to the growth, advertisement, and development of any such county. The Board of County Development shall consist of five (5) members; two (2) to be appointed by the Commissioners Court of such counties, representative of the agricultural interest of such counties, and three (3) of whom shall be appointed by the Board of Directors of the Chamber of Commerce of the county seat of such county. Said members shall serve for a period of two (2) years from their appointment, without compensation, and until their successors are appointed and accept such appointment. Vacancies on such Board shall be filled in the same manner as the original appointments, and by the same agencies.

All members of such Board of County Development shall be qualified tax-paying voters of the county in which they are appointed to serve. Acts 1939, 46th Leg., Spec.L., p. 966.

Effective Feb. 11, 1939.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing Commissioners Courts in counties having a population of not less than forty thousand (40,000) inhabitants and not more than fifty thousand (50,000) inhabitants, and containing a city of not less than thirty thousand (30,000) inhabitants nor more than forty thousand (40,000) inhabitants, according to the last preceding Federal Census, to levy a direct

tax of not more than five cents (5¢) on the one hundred dollars assessed valuation, for the purpose of advertising and promoting the growth and development of such counties and their county seats, and providing for an election authorizing such tax; and creating and providing for the appointment of a Board of County Development, devoted to the growth, advertisement, and development of such counties, and their county seats; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 966.

**Art. 2368a. Requirements governing advertising for bids by counties and cities**

**Tax levy for payment of bonds or warrants**

Sec. 8. It is hereby made the duty of all Commissioners' Courts and of all governing bodies, as the case may be, to levy, and have assessed and collected, taxes sufficient to pay the interest as it accrues and the principal as it matures on all bonds and time warrants issued in accordance with the provisions of this Act. The same duties in reference to the levying, assessment and collection of taxes, as are imposed by the provisions of Chapters 1 and 2, of Title 22, Revised Civil Statutes of 1925, to assure the payment of taxes on bonds therein authorized, are imposed on said Commissioners' Courts and said governing bodies in reference to all bonds and time warrants issued in accordance with this Act; provided that if a tax, meeting the requirements of Article 11, Sections 5 and 7 of the Constitution shall have been levied to pay principal and interest thereon, any bond or warrant may thereafter be funded or refunded through the issuance of funding or refunding bonds or warrants irrespective of the fact that due to decline of property values or for other reasons, the City or County seeking to issue such funding or refunding bonds or warrants does not then have available taxing power sufficient to pay the principal and interest of such funding or refunding bonds or warrants. As amended Acts 1937, 45th Leg., p. 179, ch. 95, § 1.

Amendment of 1937 effective April 5, 1937.

The amendatory act of 1937 added to section 8 of this article a proviso beginning with the words "Provided that if the tax" and extending to the end of the section.

Section 2 of the amendatory act of 1937 is article 2368d post and section 3 declares an emergency making the act effective on and after its passage.

**Art. 2368d. Validation of funding and refunding securities issued by Commissioners' Court or Cities and Towns**

All actions heretofore taken by Commissioners' Courts and by the governing bodies of Cities and Towns in the authorization, execution, issuance and delivery of such funding and refunding bonds and such funding and refunding warrants, in attempted compliance with the provisions of Chapter 163, Acts of the Regular Session of the Forty-second Legislature<sup>1</sup> are hereby validated and all such funding and refunding securities issued pursuant to such actions are hereby validated; provided, however, that such validation shall not affect or in any wise apply to the subject matter of any litigation pending at the time this Act becomes effective, until such litigation is determined, finally, favorably to its validity, or until such litigation has been dismissed. Acts 1937, 45th Leg., p. 179, ch. 95, § 2.

<sup>1</sup> Article 2368a.

Effective April 5, 1937.

See note to article 2368a, § 8.

**Art. 2371. Rest-room for women**

That the Commissioners Court in each county in this State may maintain a rest room for women in the courthouse, or if for any reason a suitable rest room cannot be had in the courthouse, they may maintain a rest room at some convenient place near the courthouse. The rest room may be comfortably furnished with lounge, chairs, mirror, lavatory, tables, and such other furnishings as may be needed to make the room attrac-

tive and comfortable for women who may be in attendance on the Court or who may for other reasons be in town.

The Commissioners Court may assist the business and professional men, the various women's clubs, and other organizations in paying the salary of a matron for the rest room; providing the County Judge shall appoint such matron with the consent of the Commissioners Court; providing that in counties having a population according to the last United States Census of less than twenty-five thousand (25,000), the expense and furnishing of the rest room shall not exceed One Hundred and Twenty-five Dollars (\$125), nor shall the Commissioners Court expend more than Fifteen Dollars (\$15) per month for the maintenance of the rest room, including the compensation paid by the county to the matron; counties having a population according to the last United States Census of more than twenty-five thousand (25,000) and less than fifty thousand (50,000) may expend not to exceed Two Hundred Dollars (\$200) in furnishing a rest room and may expend for its maintenance not to exceed Twenty-five Dollars (\$25) per month, including the compensation paid by the county to the matron; and those counties having more than fifty thousand (50,000) and less than two hundred and fifty thousand (250,000) population may expend in furnishing a rest room not to exceed Three Hundred Dollars (\$300), and may expend for its maintenance, including the compensation paid by the county to the matron, any amount not to exceed Fifty Dollars (\$50) per month; and those counties having a population of more than two hundred and fifty thousand (250,000) according to the last United States Census may expend in furnishing a rest room for women in the courthouse or in courthouse buildings or on courthouse property a sum not to exceed Three Hundred Dollars (\$300) in furnishing such rest room, and may expend for its maintenance, including the compensation paid by the county to the matron, any amount not to exceed One Hundred Dollars (\$100) per month. As amended Acts 1937, 45th Leg., p. 555, ch. 275, § 1; Acts 1937, 45th Leg., 1st C.S., p. 1811, ch. 32, § 1.

As amended by Acts 1937, 45th Leg., p. 555, ch. 275, the article read as in the present text except that where the present text refers to counties having a population of more than 250,000 and counties having less than 250,000 population, the article, prior to the last amendment, referred to counties having a population of more than 300,000

and counties having less than 300,000 population.

Section 2 of the amendatory act of 1937, p. 555, ch. 275, and section 2 of the amendatory act of 1937, 1st C. S., p. 1811, ch. 32 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2372. Interpreters

The Commissioners Courts of the various counties of this State are hereby authorized to pay for the services of interpreters employed by the various Courts within their respective counties a sum not to exceed Five Dollars (\$5) per day, which is to be paid out of the General Funds of the county upon warrants issued by the respective Courts or clerks thereof in favor of the persons rendering such services; provided, however, that such interpreter shall be paid only for the time he is actually employed. As amended Acts 1937, 45th Leg., p. 201, ch. 106, § 1.

Amendment of 1937, effective April 6, 1937.

Section 2 of the amendatory Act of 1937 declared an emergency making the act effective on and after its passage.

#### Art. 2372c. Conservation of agricultural soils; use of road machinery

Acts 1939, 46th Leg., p. 7, § 17, art. 165a-4. provides that this article is not re-

pealed thereby and expressly preserves this article.

**Art. 2372d. County horticultural and agricultural exhibits**

Section 1. All counties in the State acting by and through their respective Commissioners' Courts may provide for annual exhibits of horticultural and agricultural products, livestock and mineral products, and such other products as are of interest to the community. In connection therewith, such counties may also establish and maintain museums, including the erection of the necessary buildings and other improvements, in their own counties or in any other county or city in the United States, where fairs or expositions are being held.

Sec. 2. The Commissioners' Courts of the respective counties or the Commissioners' Courts of several counties may cooperate with each other and participate with local interests in providing for the erection of such buildings and other improvements as may be necessary to accomplish the purpose mentioned in Section 1, of this Act and for the assembling, erecting, and maintaining of such horticultural and agricultural, livestock and mineral exhibits, and the expenses incident thereto.

Sec. 3. All incorporated cities, water improvement districts, and water control and improvement districts may cooperate with the Commissioners' Courts of such counties for the purposes stated in Section 1, and Section 2 of this Act and appropriate monies in providing for such exhibits, establishing and maintaining such museums, and in the erection of such buildings and improvements, and the assembling, erecting and maintaining of such horticultural, agricultural, livestock and mineral exhibits.

Sec. 4. Nothing herein contained shall be construed as repealing or modifying any of the provisions of Chapter 163, General Laws, Regular Session, Forty-second Legislature (known as House Bill 312),<sup>1</sup> nor as taking the provisions of this Act out of limitations of said Chapter 163. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2103, ch. 507, § 1.

<sup>1</sup> Article 2368a.

Effective Oct. 31, 1936.

Section 2 of the amendatory act of 1936 made the provisions of the act separable and related to partial invalidity.

Section 3 of the amendatory act of 1936

repeals all conflicting laws and parts of laws.

Section 4 of the amendatory Act of 1936 declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 2372e—1. Renting office space for administration of unemployment relief in counties of 48,900 to 49,000 population**

Section 1. The County Commissioners' Courts and the City Commission of any incorporated town within said County of this State are hereby authorized to lease or rent office space for the purpose of aiding and cooperating with the agencies of the State and Federal Governments engaged in the administration of relief of the unemployed and needy people of the State of Texas, and to pay the regular monthly utility bills for such offices, such as lights, gas and water; and when in the opinion of a majority of the Commissioners' Court of a county such office space is essential to the proper administration of such agencies of either the State or Federal Governments, said Courts are hereby specifically authorized to pay for same and for the regular monthly utility bills for such offices out of the County's General Fund by warrant as in the payment of other obligations of the County. The provisions of this Act shall apply to counties having a population of not less than forty-eight thousand nine hundred and not more than forty-nine thousand according to the last preceding Federal Census.

Sec. 2. All actions, proceedings, orders and contracts for such rental, lease or utility bills for such purposes as stated in Section 1 here-

of, made and entered into by any Commissioners' Courts of this State, pursuant to which such service has been rendered, are hereby validated, confirmed and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

Sec. 3. If any part, section, paragraph, sentence, clause, phrase, or word contained in this Act shall ever be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions despite such invalidity. Acts 1937, 45th Leg., 2nd C.S., p. 1829, ch. 5.

Effective Oct. 26, 1937.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing County Commissioners' Courts and the City Commission of any incorporated town within said County to lease or rent office space for the purpose of aiding and cooperating with the agencies of the State and Federal governments engaged in the administration of relief of the unemployed and needy people in the State of Texas, and to pay the regular monthly utility bills for such offices, such as lights, gas and water; to pay for such leases, rentals and utilities out of the County General Fund when in the opinion of a majority of the Com-

missioners' Court such is essential to a proper administration of such agencies of either the State or Federal governments; the provisions of this Act shall apply to counties having a population of not less than forty-eight thousand nine hundred and not more than forty-nine thousand according to the last preceding Federal Census; providing for the validation of all actions, proceedings, orders and contracts for such rental, lease or utility bills heretofore made by any County Commissioners' Courts; providing that if any part in this Act shall ever be held unconstitutional, such holding shall not affect the validity of the remaining portions of the Act; and declaring an emergency. Acts 1937, 45th Leg., 2nd C.S., p. 1829, ch. 5.

#### Art. 2372e—2. Renting office space for administration of unemployment relief; cooperation with State and Federal agencies

Section 1. The County Commissioners Courts and the City Commission of any incorporated town or city of this State are hereby authorized to lease, rent, or provide office space for the purpose of aiding and cooperating with the agencies of the State and Federal Governments engaged in the administration of relief to the unemployed or needy people of the State of Texas, and to pay the regular monthly utility bills for such offices, such as lights, gas, and water; and when in the opinion of a majority of a Commissioners Court of a county such office space is essential to the proper administration of such agencies of either the State or Federal Governments, said Court is hereby specifically authorized to pay for same and for the regular monthly utility bills for such offices out of the County's General Fund by warrants as in the payment of such other obligations of the county.

Sec. 2. All actions, proceedings, orders, and contracts for such rentals, lease, or utility bills for such purposes as stated in Section 1 hereof, made and entered into by any Commissioners Court of this State, pursuant to such services as have been rendered are hereby validated, confirmed, and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

Sec. 3. If any part, section, paragraph, sentence, clause, phrase, or word contained in this Act shall ever be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity. Acts 1939, 46th Leg., p. 558.

Effective May 8, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing County Commissioners Courts and the City Commission of any incorporated town or city to lease or rent



office space for the purpose of aiding and cooperating with the agencies of the State and Federal Governments engaged in the administration of relief of the unemployed and needy people in the State of Texas, and to pay the regular monthly utility bills for such offices, such as lights, gas, and water; to pay for such leases, rentals, and utilities out of the General Fund when in the opinion of a majority of the Commissioners Court such is essential to the proper ad-

ministration of such agencies of either the State or Federal Governments; providing for the validation of all actions, proceedings, orders, and contracts for such rentals, leases, or utility bills heretofore made by any Commissioners Court; providing that if any part of this Act shall ever be held unconstitutional, such holding shall not affect the validity of the remaining portions of the Act; and declaring an emergency. Acts 1939, 46th Leg., p. 558.

**Art. 2372f. Pickup trucks, purchasing and maintaining in certain counties**

In any county in this State having a population of not less than sixty thousand, five hundred (60,500) nor more than sixty thousand, five hundred and twenty-five (60,525), and in any county having a population of not less than forty-three thousand, thirty-six (43,036), and not more than forty-three thousand, seventy-five (43,075), according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each Commissioner to purchase a pickup truck to be used in each respective Precinct on official business and it shall be paid for out of the Road and Bridge Fund of the respective Commissioner's Precinct, and each Commissioner shall make under oath an account of his expenditures for such purpose. Acts 1937, 45th Leg., p. 874, ch. 430, § 1.

Effective June 2, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.  
 Title of Act:

An Act authorizing the Commissioners Court in certain counties to allow each

County Commissioner to purchase and maintain a pickup truck for use in each Commissioner's Precinct in connection with official business; providing the funds from which the cost of same shall be paid; and declaring an emergency. Acts 1937, 45th Leg., p. 874, ch. 430.

**Art. 2372g. Payment of salaries of employees in case of illness in certain counties**

Section 1. That from and after the effective date of this Act, in all counties in this State having a population of not less than two hundred and ninety thousand (290,000) inhabitants nor more than three hundred and twenty thousand (320,000) inhabitants, according to the last Federal Census and any future Federal Census, the Commissioners Courts of such counties shall provide for, and it shall be their duty to pay, employees of such counties while incapacitated from duty on account of illness or injury suffered or sustained while in the active and actual discharge of his or her duty to said county, upon the following basis and in the following manner, to wit: Where said employee suffers or sustains physical injury while in the actual discharge of his or her duties to the county, which renders said employee unfit for the discharge of such duties as may be imposed upon said employee by the Commissioners Court, then said Commissioners Court is hereby authorized and required to pay said employee not exceeding six (6) months pay upon the following basis: (a) The first three months illness, or any fractional part thereof, upon the basis of said employee's full and regular pay; (b) the last three months illness, or any fractional part thereof, if such illness should continue for said period, upon the basis of one-half the regular pay of said employee. Should said employee of the county become ill from any other cause which can be directly traced to his or her employment with the county, in the discharge of his or her duties, then said employee shall be paid upon the same identical basis as is hereinabove set forth.

Sec. 2. The Commissioners Courts of said counties and each of them shall inquire into any and all injuries and illnesses of said employees before making any awards of money under this law, and it shall be the duty of said Commissioners Courts to examine witnesses, conduct hearings and subpoena witnesses for the purpose of determining the merits of each claim. The said Commissioners Courts are hereby specifically authorized to grant or refuse awards of money unto any employee, and are also given the right to make awards in any amount not exceeding the limits as set by this Act. Any employee feeling himself or herself aggrieved by the action of the Commissioners Court shall have the right of appeal to the Court having jurisdiction of the amount involved, provided said appeal is taken within ten (10) days after rendition of the judgment of the Commissioners Court of such county, and said trial shall be de novo.

Sec. 3. The Commissioners Courts of the counties provided for in this Act may grant vacations to employees in the actual employ of such counties not exceeding ten (10) days in any calendar year and, when such vacations are granted, all employees in actual employment of such counties shall be compensated for such vacation time as if actual service were being rendered under their employment. It being the purpose of this Act to grant reasonable vacation time during each calendar year for employees in the counties embraced within this Act. Acts 1939, 46th Leg., p. 140.

Filed without the Governor's signature,  
May 19, 1939.

Section 4 of the Act of 1939 repeals all conflicting laws and parts of laws; section 5 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act authorizing and requiring County Commissioners Court in certain counties to pay employees salaries while ill from injuries received in line of duty; also in cases of illness directly resulting from employ-

ment; providing mode and manner of payment of such salaries and amount of same; providing method of determining liability of County Commissioners Courts; providing for hearings, examination of witnesses and giving County Commissioners Courts rights to subpoena witnesses; providing method of appeal; providing for vacation with pay during each calendar year; repealing all laws in conflict; and declaring an emergency. Acts 1939, 46th Leg., p. 140.

## TITLE 46—CREDIT ORGANIZATIONS

### 1. RURAL CREDIT UNIONS

Art.

2484a. "Capital and surplus," defined [New].

### 3. MUTUAL LOAN CORPORATIONS

Art.

2507a. Amendatory act applicable existing corporations [New].

### 1. RURAL CREDIT UNIONS

#### Art. 2462. Loans and investments

A Credit Union may receive the savings of its members in payment for shares or as deposits. It may borrow money in any amount not to exceed fifteen (15) per cent of its capital and surplus, as the term is herein defined. It may lend money to its members within the limits and subject to the restrictions provided by law, providing that ten (10) per cent per annum be the maximum rate of interest on loans and such rate of interest shall include all charges of any nature. In the discretion of the Board of Directors, it may invest its surplus and accumulated funds in the obligations of the United States of America, of the State of Texas, or any political subdivision thereof, provided such subdivision has not within the preceding five (5) years defaulted in the payment of any principal or interest on the obligations or class of obligations in which such investment is made; it may also invest such surplus and accumulated funds in shares of Building and Loan Associations approved by the Commissioner of Banking of the State of Texas; and it may make loans to other State and Federal Credit Unions, provided such investments in shares of Building and Loan Associations and loans to such Credit Unions shall never aggregate more than twenty-five (25) per cent of the capital and surplus of the Credit Union making such investments and loans, nor shall any such loans be in excess of five (5) per cent of capital and surplus of the lending union, in any of the above-named organizations and classes of securities. As amended Acts 1939, 46th Leg., p. 221, § 1.

Effective April 18, 1939.

Section 6 of the amendatory Act of 1939 provided that "if any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect

any other portion or provisions hereof, and all other provisions shall remain valid and unaffected by any invalid portion, if any." Section 7 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2475. Depositories

The capital, deposits, and surplus funds of the Association shall be either lent to the members for such purposes and upon such security as the directors of the Credit Union shall approve, or deposited to the credit of the Association in State or National banks, and in savings banks, or trust companies, or in any agency now or to be provided, either by State or Federal Law, whose purpose is the orderly interchange of funds between Credit Unions, incorporated under the Laws of this State or under the Laws of the United States of America, located in this State; such depositories to be approved by the Banking Commissioner, or such funds may be lent as provided in Section 1 of this Act. As amended Acts 1939, 46th Leg., p. 221, § 2.

Effective April 18, 1939.

For sections 6 and 7 see note to art. 2462 ante.

**Art. 2477. Conditions of loans**

No member of the Board of Directors or of the credit or supervisory committee shall receive any compensation for his services as a member of said Board or committee, nor shall any member of the Board of Directors or supervisory committee, either directly or indirectly, borrow from or become surety for any loan or advance made by the Association except in a sum not to exceed his holdings in the Credit Union as represented by shares thereof, or upon a vote of two-thirds of the members of the Credit Union. No loan shall be granted except for productive or provident purposes or urgent needs, nor for a longer period than twenty-four (24) months; nor shall any loan be renewed for a sum as large as the original amount. Loans to any one member shall not exceed Two Hundred Dollars (\$200), or ten (10) per cent of the capital and surplus, whichever shall be the larger. As amended Acts 1939, 46th Leg., p. 221, § 3.

Effective April 18, 1939.

For sections 6 and 7 see notes to art. 2462, ante.

**Art. 2484. Report to Commissioner**

Within twenty (20) days after the last business day of December each year, every such Association shall make to the Banking Commissioner a report in such form as he may prescribe, signed by the president, treasurer, and a majority of the supervisory committee who shall certify and make oath that the said report is correct according to their best knowledge and belief. Said Credit Union shall pay to the Banking Commissioner at the time of the filing of this report the sum of Five Dollars (\$5) as a filing fee. Any such Association that shall neglect to make the said report within the time herein prescribed shall forfeit to the State Five Dollars (\$5) for each day during which said neglect shall continue. All such Associations shall be exempt from all franchise or other license tax; nor shall any intangible property of such Associations be taxable by this State or any political subdivision thereof. As amended Acts 1937, 45th Leg., p. 217, ch. 117, § 1; Acts 1939, 46th Leg., p. 221, § 4.

Effective April 18, 1939.

For sections 6 and 7 see note to art. 2462, ante.

**Art. 2484a. "Capital and surplus," defined**

The term "capital and surplus" as used in this Act shall mean the aggregate of the paid-up shares of the members plus the total cash deposits of the members with the Credit Union less any and all outstanding obligations and liabilities of the Credit Union. Acts 1939, 46th Leg., p. 221, § 5.

Effective April 18, 1939.

For sections 6 and 7, see note to art. 2462, ante.

**3. MUTUAL LOAN CORPORATIONS****Art. 2503. Ratio of capital to loans**

Such corporations shall automatically increase their capital stock at the rate of five (5) per cent of the amount of loans made by them to their member stockholders, and their articles of incorporation and bylaws shall so provide. Such corporations shall not make loans in excess of twenty (20) times their unimpaired capital stock represented by the part

of their capital stock so automatically increased. [As amended Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

Effective 90 days after May 22, 1937, date of adjournment.

Section 3 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

Amendment of this article by Acts 1937, 45th Leg., p. 592, ch. 296, § 1 was made applicable to existing corporations by section 2 of such act, which is set forth as article 2507a.

#### Art. 2504. Articles of incorporation

The articles of incorporation shall further provide: that each applicant for a loan or discount by such corporation shall become a subscriber of its common stock in an amount equal to at least five (5) per cent of the loan or discount applied for, to be fully paid for upon, or before, the closing of such loan or granting of such discount, provided the board of directors may waive such requirement if the borrower is already the owner of sufficient stock; and that the corporation may put in, out of available funds, any outstanding stock at the book value thereof, as conclusively determined by the directors of such corporation. [As amended Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

Effective 90 days after May 22, 1937, date of adjournment.

Amendment of this article by Acts 1937, 45th Leg., p. 592, ch. 296, § 1 was made ap-

plicable to existing corporations by section 2 of such act, which is set forth as article 2507a.

#### Art. 2507. Rate of interest

No corporation organized under the provisions of this Chapter shall, in making loans to its members, or discounting notes of the members of such corporation, charge the member borrower in excess of three (3) per cent per annum of the rate of discount established and promulgated by the Farm Credit Administration for discounts made by the Federal Intermediate Credit Banks. As amended Acts 1937, 45th Leg., p. 592, ch. 296, § 1.

Effective 90 days after May 22, 1937, date of adjournment.

Amendment of this article by Acts 1937, 45th Leg., p. 592, ch. 296, § 1 was made ap-

plicable to existing corporations by section 2 of such act, which is set forth as article 2507a.

#### Art. 2507a. Amendatory act applicable existing corporations

The provisions of this amendatory Act shall be applicable to all existing corporations as well as those hereafter organized and existing under the provisions of Articles 2500 to 2507, inclusive, of the Revised Civil Statutes of Texas, 1925, as amended, and such existing corporations may avail themselves of the provisions of this Act regardless of any existing liabilities of such corporations, and be it so enacted. [Acts 1937, 45th Leg., p. 592, ch. 296, § 2.]

Effective 90 days after May 22, 1937, date of adjournment.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

## TITLE 47—DEPOSITORIES

## CHAPTER ONE—STATE DEPOSITORIES

## Article 2525. [2417] Depository Board

The State Treasurer, as Secretary, together with the Attorney General and Banking Commissioner, shall constitute the State Depository Board. Said Board shall have the right and the power to make and enforce such rules and regulations governing the establishment and conduct of State Depositories and the handling of funds therein as the public interest may require, not inconsistent with the provisions of the laws governing such Depositories, which rules and regulations shall be in writing and entered upon the minutes of the Board. Said Board shall have the power to determine and designate the amount of State funds deposited by them in State Depositories that shall be "demand deposits" and what amount shall be "time deposits", and may contract with said Depositories in regard to the payment of interest on "time or demand deposits" not to exceed such rate as may be lawful under any Act of Congress and such rules and regulations as may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. The term "demand deposits", as used herein, shall mean any deposit which is payable on demand, and the term "time deposits", as used herein, shall mean any deposit with reference to which there is in force a contract that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. Whenever the word "Treasurer" is used in the Statutes it shall mean the State Treasurer, and the word "Board" shall mean the State Depository Board. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Section 2 of the amendatory act of 1937 makes the act operative on and after August 1, 1937, and provides that all banks that are now designated as State Depositories shall be required to file new applications and to be redesignated under this act, and the Board is author-

ized to receive additional applications and to designate new banks under this act for the unexpired depository year, section 3 repeals all conflicting laws and parts of laws and especially article 2539, and section 4 declares an emergency making the act effective on and after its passage.

## Art. 2526. [2418] Notice to Banks

The Treasurer on the second Tuesday in September annually, shall mail to each State and National Bank doing business in this State, a circular letter. Said letter shall state the conditions to be complied with by the applicants for designation as a State Depository. The Treasurer shall keep on file in his office for the inspection of any person desiring to see the same a list of the banks to which letters have been sent. Designation of Depositories shall be for a period of one year's time. If it develops that more depositories are required at any time, the Board may send out notices to all State and National Banks notifying them that further applications for funds for the unexpired term will be accepted, or additional funds allotted to existing depositories upon application therefor. Said additional depositories shall comply with the same rules and conditions regarding all other depositories. As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

**Art. 2527. [2419] Application for deposits**

The application of the bank applying for State funds shall state its amount of paid up capital stock and permanent surplus, and the maximum of State funds it will accept, accompanying same with a statement of the Bank's condition at the date of said application. Such application shall contain a provision that the books and accounts of such bank, if designated as a State Depository, shall be open at all times to the inspection of the Board, any member or any accredited representative thereof. All such applications shall be mailed to the Treasurer at Austin in time to reach his office on or before noon of the fifteenth day of October next succeeding. Applications received after said date may be considered at the option of the Board. As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

**Art. 2528. [2420] Acceptance**

When the Treasurer receives such application, he shall endorse thereupon the date of its receipt, and shall in November prepare three (3) lists giving the names of all applicants for funds and the amount applied for. One list shall be furnished each member of the Board. The Board shall meet on the first Monday in November thereafter, and consider said applications, giving approval to those applicants that are acceptable, and having the power to reject those whose management or condition, in the opinion of the Board, does not warrant the placing of State funds in their possession. No application for State funds shall be granted to any bank whose liabilities for borrowed money are in excess of its capital stock, but the Board may in its discretion, waive this provision. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

**Art. 2529. [2423] Qualifications of depositories**

As soon as practicable after the Board shall have passed upon said applications, the Treasurer shall notify all banks whose applications have been accepted of their designation as State Depositories of State funds. The Treasurer shall require each bank so designated to qualify as a State Depository on or before the 25th day of November next; by (a) depositing a depository bond signed by some surety company authorized to do business in Texas, in an amount equal to not less than double the amount of State funds allotted, such bond to be payable to the Treasurer and to be in such form as may be prescribed by the Board and subject to the approval of such Board; or (b) by pledging with the Treasurer any securities of the following kinds: Bonds and certificates and other evidences of indebtedness of the United States, and all other bonds which are guaranteed as to both principal and interest by the United States; bonds of this State; bonds and other obligations issued by the University of Texas; warrants drawn on the State Treasury against the General Revenue of the State; bonds issued by the Federal Farm Mortgage Corporation provided both principal and interest of said bonds are guaranteed by the United States Government; Home Owners Loan Corporation Bonds, provided both principal and interest of said bonds are guaranteed by the United States Government and such securities shall be accepted by the Board in an amount not less than five (5) per cent greater than the amount of State funds which they secure; pro-

vided, that Texas Relief Bonds may be accepted at face value and without margin for the amount of State funds allotted, provided, such State Relief Bonds have all unmatured coupons attached; bonds of counties located in Texas; road districts of counties in Texas; independent and common school districts located in Texas; and bonds issued by municipal corporations in Texas; all of such securities may be accepted by the Board, provided, the aggregate amount thereof is not less than twenty (20) per cent greater than the total amount of State funds that they secure, provided, that the amount of all bonds and other obligations offered as collateral shall be determined by the Board on the basis of either their par or market value whichever is less. The term "market value" as used herein shall mean the fair and reasonable prevailing price at which said bonds are being sold on the open market at the time of the appraisal of the securities by the Board, and the action of the Board in fixing the valuation of said bonds shall be final, and not subject to review.

No State, county, road district bond, independent or common school district or municipal bonds, or obligations of the Board of Regents of the University issued by the University of Texas, shall be accepted as collateral security unless they shall be approved by the Attorney General. All bonds accepted as collateral security shall be registered under the same rules and regulations as are required for bonds in which the Permanent School Funds are invested. Subject to the approval of the Board, a State Depository may secure its deposits of State funds in part by an acceptable surety bond and in part by acceptable collateral of the kind herein mentioned, and any losses sustained where a Depository has secured its deposits in part by collateral and part by a surety bond, the loss may be enforced against either the collateral security or the surety bond. No warrant drawn on the State Treasury shall be accepted as collateral, unless said warrants are accompanied by affidavits, sworn to by some officer of the bank offering said warrants, which said affidavits shall affirm that none of the warrants offered as collateral security were transferred or assigned by the original payees of said warrants or any of them for a less consideration than ninety-eight (98) per cent of the face value of said warrants, and that none of such warrants were obtained from the original payee by loaning money thereon at a rate of interest greater than eight (8) per cent per annum. The Board shall have the power to reject any and all collateral or surety bonds tendered by a State Depository, without assigning any reason therefor, and its action in so doing shall be final and not subject to review. Notwithstanding the foregoing provisions requiring security for State funds deposited in State Depositories in the form of surety bond or collateral, security for such deposits shall not be required to the extent that said deposits are insured by the Federal Deposit Insurance Corporation under the provisions of Section 12b of the Federal Reserve Act as amended,<sup>1</sup> or as the same may hereafter be amended.

In the event the market value of the securities pledged by any Depository shall decrease to the point where the collateral value of said securities, as fixed by the Board, is less than the amount of said funds on deposit in said Depository, the Board shall require additional security in order to equalize such depreciation.

When the collateral pledged by a State Depository to secure a deposit of State funds shall be in excess of the amount required under the provisions of this Act, the Treasurer may, subject to the approval of the Board, permit the release of any such excess. In the event the balance to the credit of the Treasurer on the books of such bank shall be thereafter increased, adequate security as provided for in this Act, shall be



deposited and maintained by such depository bank. As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1939, 46th Leg., p. 255, § 1.

1 12 U.S.C.A. § 264.

Effective April 24, 1939.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2530. [2426] Deposit of securities

In the event the State Depository, as designated in the preceding Article, shall elect to deposit said pledged securities, above mentioned, with the State Treasurer, the said securities shall be delivered to the Treasurer and receipted for by him, and retained by him in the vaults of the State Treasury. Provided, however, that such bank so designated as depository shall have the option, instead of depositing said pledged securities with the State Treasurer, of depositing same with another State or National Bank situated in the State, subject to the approval of the Board; said securities to be held in trust by said custodian bank to secure funds deposited by the State Treasurer in the depository bank. Upon the receipt of said securities, said custodian bank shall immediately issue and deliver to the State Treasurer controlled trust receipts for said securities pledged to the State Treasurer. The security evidenced by such trust receipts shall be subject to inspection by the Board or its agents at any time deemed advisable by said Board. Said custodian bank shall have a capital stock and permanent surplus of not less than Five Hundred Thousand (\$500,000.00) Dollars, and said bank designated as depository shall itself defray the charges, if any, of such custodian bank for accepting and holding said securities.

Subject to the approval of the Board, a State Depository may have the right to substitute one group of securities for another group of securities pledged with the State Treasurer, when and as such State Depository may desire to make such substitution, so long as the securities desired to be substituted by such bank shall come within the classification of securities acceptable under the terms of this Act.

If, in any case, or at any time, such bonds or other securities are not satisfactory security, in the opinion of the Board, for the deposits made under this Act, they may require such additional security to be given as will be satisfactory to them. Said Board shall, from time to time inspect such bonds and see that the same are actually kept in the vaults of the State Treasury and in said custodian banks. In the event that any State Depository shall fail to pay deposits or any part thereof on the check of the Treasurer, he shall have the power to forthwith realize upon such bonds or other securities deposited by said bank, and disburse the money arising therefrom, according to law, upon the warrants drawn by the Comptroller upon the funds for which said bonds or other securities were secured. Any bank making deposits of bonds or other securities with the Treasurer under the provisions of this Act may cause such bonds or other securities to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral and not transferable, except as herein provided.

Upon request of the owner or owners, the Treasurer or custodian bank may surrender interest coupons or other evidence of interest when due on securities deposited by depository banks, provided, said securities are ample to meet the requirements of the State.

Whenever any private bank now organized as provided for by the private banking laws of Texas should seek to become a depository for State funds or any other governmental agency, it shall agree in writing

to submit itself to examination as to its solvency. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

**Art. 2531. [2424] Failure to qualify**

In case any bank that has submitted an application for State funds shall fail to qualify within the time specified in this Act after being notified to do so, it shall forfeit its right to act as a depository for a period of one year, at the option of the Board. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

**Art. 2532. [2425] Placing deposits**

After the depositories have qualified as provided in the preceding articles, it shall be the duty of the Treasurer to deposit the funds belonging to the State in such depositories, as far as practical on a fair percentage basis, and shall at all times keep such funds equitably prorated in proportion to the amount which each is entitled to receive by drawing warrants alternately thereon, or by apportioning the warrants so drawn, and after giving the notice required for the withdrawal of funds deposited to the credit of any "time deposits" in any State Depository or Depositories.

No depositories shall be entitled to keep on deposit State funds in an amount in excess of their paid up capital stock and permanent surplus. Any reduction in the capital stock and permanent surplus of any depository shall reduce correspondingly the amount of State funds which it can retain as a depository, and the Treasurer is authorized to withdraw from said depository any funds in excess of its capital and permanent surplus, provided, that where any depository shall pledge as security for State funds on deposit with it warrants drawn upon the State Treasury against the General Fund of this State as provided by Article 2529, and shall also make the proof required in such Article that such warrants were acquired by it as therein provided, then the limitation upon the amount of deposits that may be placed in said depository shall not apply, but the amount of said funds to be deposited in said depository shall be determined by the State Depository Board.

If there be a surplus after the awards are made, the surplus shall be prorated among the applying banks.

Such provisions, however, shall not affect arrangements for clearing checks made by said Board with State Depositories as hereinafter provided.

All State Depositories shall collect all checks, drafts and demands for money so deposited with them by the Treasurer and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the Depository Bank, provided, that any expense incurred in collection thereof by the Depository which the Depository is not allowed or permitted to pay by reason of any Act of the Congress of the United States or any rule or regulation promulgated thereunder by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation shall be charged to and paid by the State Treasurer out of any moneys appropriated by the Legislature for that purpose.

If there should be at any time a surplus of State funds above the aggregate amount applied for by and allotted to State Depositories, the Treasurer, with the approval of the Board, is hereby authorized to de-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

posit said surplus funds in the vaults of the State Treasury, or the Board shall have the power to deposit said surplus, or any part thereof with any one or more banks in such amounts and for such periods as it may deem advisable, and any bank receiving such deposits under this Article shall execute a bond or furnish collateral in the manner and form provided in Article 2529 under the conditions provided in said Article.

The State Depositories shall show in their statements, published according to law, the amount of State funds on deposit with them. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

#### Art. 2533. [2428] Centrally located depositories

The Board shall designate one or more banks which have been selected as State Depositories in centrally located cities to be used for clearing checks and other obligations due the State, and the Treasurer shall keep sufficient moneys on deposit in the "demand deposits" account in said Depositories to meet all current claims upon the State, and all items received by the Treasurer for collection shall be deposited with such Depositories to be credited to the "demand deposits" account in said banks, and all checks drawn by the Treasurer for the payment of obligations due by the State may be drawn on such accounts in such Depositories or on the "demand deposits" account in other State Depositories so that the checks of the State may at all times pass current as cash. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

#### Art. 2534. [2431] Withdrawals

The funds on deposit with depositories shall be subject to withdrawal at any time by the Treasurer, except funds designated by the Board as "time deposits" which shall be withdrawn in the manner agreed upon in the contract under which such funds have been deposited. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

#### Art. 2535. [2429] Remittances

All State Depositories shall remit free of charge, except such charges which depository is not allowed or permitted to pay by reason of any Act of the Congress of the United States or any rule or regulation promulgated thereunder by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, to the Treasurer on his demand, all withdrawals of State funds as provided for in the preceding Article. All remittances to the Treasurer made by the State Depositories, or any person or persons may be in cash by registered and insured letter; by post office money order; express money order of any company authorized to do business in Texas, or by any bank draft on any bank in the following cities: Dallas, Fort Worth, Waco, Houston, Austin, Galveston and San Antonio. The liability of any State Depository or person sending the same shall not cease until the said money is actually received by the Treasurer. Any depository that refuses to remit for State items, or Treasury drafts, as above indicated, shall upon order of the Board forfeit its right to receive further deposits, and the Board shall have the right to withdraw all funds from said bank,

which shall thereafter cease to be a State Depository. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937. See note to article 2525.

#### Art. 2537. [2432] Cancellation of contracts

Each State Depository shall have the right to cancel its depository contract upon accounting to the Treasurer for all funds deposited with it at the end of any year by giving thirty (30) days notice in advance.

The Board shall have the right to terminate a contract with the depository at any time they deem it to the interest of the State to do so, upon giving the depository fifteen (15) days notice of such termination. The Treasurer shall discontinue making deposits in any bank when in the opinion of the Board the condition or management of the bank warrants such action on his part. [As amended Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Amendment of 1937, effective August 1, 1937.

See note to article 2525.

#### Art. 2539. [Repealed by Acts 1937, 45th Leg., p. 319, ch. 164, § 3]

Prior to repeal of this article in 1937 it was amended by Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1, which amendment made no reference to the repeal of

this article by Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1. Effective August 1, 1937.

### CHAPTER TWO—COUNTY DEPOSITORIES

#### Art. 2544. [2440] Notice to banks

The Commissioners Court of each county is hereby authorized and required at the February Regular Term thereof next following each general election to enter into a contract with any banking corporation, association or individual banker in such county for the depositing of the public funds of such county in such bank or banks. Notice that such contracts will be made by the Commissioners Court shall be published by and over the name of the County Judge, once each week for at least twenty (20) days before the commencement of such term in some newspaper published in said county; and if no newspaper be published therein, then in any newspaper published in the nearest county. In addition thereto, notice shall be published by posting same at the courthouse door of said county. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.

Section 4 of the amendatory Act of 1937, cited to the text (article 2566a of this title), provides that security for deposits shall not be required to the extent covered by Federal Deposit Insurance.

Section 5 reads as follows:

"This Act shall not become operative until on and after August 1, 1937, and all banks that are now designated as county depositories or the depositories for any city, town or village, or the depository for any trust funds shall be required to file new applications and be re-designated under the terms of this Act and the County Commissioners Court of each county and the governing body of any city, town,

or village in this State is hereby authorized to receive applications and to designate new banks as depositories under this Act for the unexpired depository year. All contracts made by County Commissioners Courts of this State and the governing bodies of any incorporated city, town or village with banks as depositories under the laws governing said contracts prior to the passage of this Act and all proceedings in connection therewith are hereby in all things approved and validated."

Section 6 declared an emergency and provided that the act should take effect from and after August 1, 1937.

## Art. 2545. [2441] Application by banks

Any banking corporation, association or individual banker in such county desiring to be designated as county depository shall make and deliver to the County Judge an application applying for such funds and said application shall state the amount of paid up capital stock and permanent surplus of said bank and there shall be furnished with said application a statement showing the financial condition of said bank at the date of said application which shall be delivered to the County Judge on or before the first day of the term of the Commissioners Court at which the selection of the depositories is to be made. Said application shall also be accompanied by a certified check for not less than one-half of one per cent of the county's revenue for the preceding year as a guarantee of the good faith on the part of said bank, and that if said bank is accepted, as county depository, that it will enter into the bond hereinafter provided. Upon the failure of the banking corporation, association, or individual banker in such county that may be selected as depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages and the county judge shall readvertise for applications, if necessary, to obtain a county depository for said county. [As amended, Acts 1937, 45th Leg., p. 1292, ch. 484, § 1.]

Articles 2545-2558a, effective August 1, 1937.

## Art. 2546. [2442] Selecting county depository

It shall be the duty of the Commissioners Court at ten o'clock a. m. on the first day of each term at which banks are to be selected as county depositories, to consider all applications filed with the County Judge, cause such applications to be entered upon the minutes of the Court and to select those applicants that are acceptable and who offer the most favorable terms and conditions for the handling of such funds and having the power to reject those whose management or condition, in the opinion of the Court, does not warrant placing of county funds in their possession. The County Commissioners Court shall have the power to determine and designate the character and amount of county funds which will be deposited by it in said depositories that shall be "demand deposits" and what character and amount of funds shall be "time deposits," and may contract with said depositories in regard to the payment of interest on "time deposits" at such rate or rates as may be lawful under any Act of the Congress of the United States and any rule or regulations that may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. When the selection of a depository or depositories has been made, the checks of those applicants which have been rejected shall be immediately returned. The check or checks of the applicant or applicants whose applications are accepted shall be returned when said depository or depositories enter into and file the bond required by law and said bond has been approved by the Commissioners Court and the State Comptroller, and not until such bond is filed and approved. The term "demand deposits," as used herein, shall mean any deposit which is payable on demand, and the term "time deposits," as used herein, shall mean any deposit with reference to which there is in force a contract, that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.

## Art. 2547. 2443 Bonds

Within fifteen (15) days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected, to qualify as county depository in one or more of the following ways, at the option of the Commissioners Court:

(a) By executing and filing with the Commissioners Court a bond or bonds, payable to the County Judge and his successors in office, to be approved by both the Commissioners Court and the Comptroller, and immediately thereafter filed in the office of the County Clerk of said county, said bond to be signed by not less than five solvent sureties who shall own unencumbered real estate in this State not exempt from execution under the Constitution and laws of this State, of a value equal to or in excess of the amount of said bonds where there is more than one bond; said bond or bonds to be in an amount equal to the estimated highest daily balance of such county as determined by the Commissioners Court, such estimated daily balance to be in no event less than seventy-five per cent (75%) of the highest daily balance of said county for the next preceding year, less the amount of bond funds received and expended, provided, however, in the event that county funds derived from the sale of county securities during the term of such bond are deposited, such Commissioners Court shall require additional bond and/or bonds, and/or pledge of securities equal to the amount of such additional county funds. The sureties shall file with the Commissioners Court at the time of filing said bond or bonds a statement containing a description of the unencumbered and non-exempt lands owned by them sufficient to identify such lands on the ground, and such statement shall remain on file with the County Clerk and attached to such bond or bonds; and such statement shall contain a value of each tract of land so listed, together with the value of the improvements thereon.

(b) By having issued and executed by some solvent surety company or companies authorized to do business in the State of Texas, such bond or bonds, as provided by law, to be in the amount and payable as provided in subdivision (a) hereinabove, which said surety bond shall be approved by both the Commissioners Court and the Comptroller, and filed in the office of the County Clerk of said county. Provided, however, such surety company or companies may be relieved of its or their obligation on thirty (30) days' notice in writing to the Commissioners Court, such bonding surety company or companies not to be relieved of any liability for loss sustained by the county prior to the expiration date of such bonds or bond; and provided further, in the event of any surety company or companies shall ask to be relieved of such bond or bonds such depository shall, previous to the termination date of such obligation of such surety company or companies, present further security acceptable to the County Commissioners Court and the Comptroller and filed in the office of the County Clerk of said county, for the securing of county funds in accordance with the provisions of this Act.

(c) In lieu of such personal bonds or surety bonds as above specified, said banking corporation, association or individual banker so selected as county depository, may pledge and said depository bank is authorized to pledge with the Commissioners Court for the purpose of securing such county funds, securities of the following kind, in an amount equal to the amount of such county funds on deposit in said depository bank, to wit: bonds and notes of the United States, securities of indebtedness of the United States, and other evidences of in-

debtedness of the United States, when said evidences of indebtedness are supported by the full faith and credit of the United States of America and other bonds or other evidences of indebtedness which are guaranteed as to both principal and interest by the United States Government; bonds of the State of Texas, or of any county, city, town, independent school district, common school district or bonds issued under the Federal Farm Loan Act or road district bonds, bonds, pledges or other securities issued by the Board of Regents of the University of Texas, bank acceptances of banks having a capital stock of not less than Five Hundred Thousand Dollars (\$500,000); notes or bonds secured by mortgages insured and debentures issued by the Federal Housing Administrator of the United States Government, and bonds issued by municipal corporations in Texas, all said securities having a total market value equal to the amount of the depository bond; an amount of the following described securities not to exceed twenty-five per cent (25%) of the assessed value of the property in the county as shown by the certified tax roll for the preceding year, viz.: closed first mortgages on improved and unencumbered real estate situated in the State of Texas, provided such security so offered must be first approved by the Commissioners Court; and before approving such a mortgage tendered as security for deposits the Commissioners Court shall require a written opinion by an attorney selected by the Court showing that the lien so offered is superior to any and all other claims or rights in the property, and the Court shall also require that the improvements on each tract of real estate described in such mortgage be fully insured in some Stock Fire Insurance Company, or a Mutual Fire Insurance Company having One Hundred Thousand Dollars (\$100,000) surplus in excess of all legal reserves and other liabilities, to be approved by the County Judge, with loss payable clause in favor of the County Judge; such mortgage as may be approved as acceptable security under the provisions of this Article shall be assigned to the County Judge by written instrument, duly acknowledged, and the same shall be placed of record forthwith in each county where any part of said real estate is situated; and as security for such deposits, unencumbered, improved real estate, subject to approval of Commissioners Court, may be pledged directly by Deed of Trust executed to a trustee selected by the Commissioners Court, with the County Judge as beneficiary, provided that the Court shall first require the written opinion of an attorney selected by the Court, showing that the lien offered as security for deposits is superior to any and all other claims or rights in the property, and provided further that the Court shall require that all improvements on any real estate, so pledged, be fully insured in a Stock Fire Insurance Company or a Mutual Fire Insurance Company having One Hundred Thousand Dollars (\$100,000) surplus in excess of all legal reserves and other liabilities, approved by the County Judge, with loss payable clause in favor of the County Judge; and the Commissioners Court shall investigate all real estate security and determine the value at which such real estate security as is herein described shall be accepted, provided that in no event shall such security be accepted as collateral at a value in excess of fifty per cent (50%) of the reasonable market value of the real property covered by such mortgages except where such mortgages are insured or guaranteed by the Federal Housing Administrator of the United States, and such real estate security as herein described may be withdrawn and replaced by other real estate securities meeting the requirements of this Act, or any class of securities meeting the requirements of this Act, or any class of securities above

enumerated, provided all such withdrawals, substitutions and replacements must be approved by the Commissioners Court; and the County Judge shall execute such instruments as may be necessary to transfer to the depository or its order, all liens, so withdrawn, and said Commissioners Court may accept said securities in lieu of such personal or surety bonds; and such securities so pledged by such depository bank shall be deposited as the Commissioners Court may direct.

When the securities pledged by a depository bank to secure county funds shall be in excess of the amount required under the provisions of this Article, the Commissioners Court shall permit the release of such excess; and when the county funds deposited with said depository bank shall for any reason increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the Commissioners Court so that the securities pledged shall at no time be less than the total amount of county funds on deposit in said depository bank. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law, and are approved by the Commissioners Court. Upon the request of such depository bank, the Commissioners Court shall surrender interest coupons or other evidence of interest, when due, on securities deposited with the Commissioners Court by such depository bank, provided said securities remaining pledged are ample to meet the requirements of said Commissioners Court. Such depository may secure said funds by one or more of the ways herein provided, at the option of the Commissioners Court.

The condition of the personal bond or bonds, or contract for securities pledged, as hereinabove provided, shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon any "demand deposit" account in any depository by the county treasurer of the county and all checks drawn upon any "time deposit" account upon presentation, after the expiration of the period of notice required in the case of "time deposits," and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected; and provided further, that upon reasonable notice to the Commissioners Court such county depository may change from time to time its method of securing such funds so long as the same are at all times secured in the amount and manner specified herein.

Where separate bonds are given to secure county funds, each surety thereunder shall be liable only for such part of any loss sustained by failure of the depository as the amount of each bond shall bear to the aggregate amount of all bonds and/or securities held by the county for protection of the funds covered by said bonds.

In the event of payment of a loss to the county by personal sureties or surety companies, said sureties shall be subrogated by the county in the amounts such payment bears to the deposit secured by them or it at the time of default of the depository.

It shall be the duty of the Commissioners Court to investigate and inquire into the solvency of each and every surety on any personal bond or bonds so filed by such county depository and accepted by the Commissioners Court and approved as required by law, at least twice during each and every year such bonds are effective and in force, and for that purpose shall have authority to require each surety to render an itemized and verified financial statement under oath showing his



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

true financial condition. If any such statement or statements indicate that any of said sureties have become insolvent, or their net worth depreciated below the amount required by law as such sureties, or if any of the assets listed are shown to be, or are known to be depreciated, or their value in any way impaired, then and in any such events the Commissioners Court shall require a new bond meeting fully the requirements of this law; and in case of a bond or bonds the sureties on which are required to own unencumbered and non-exempt real estate as herein provided, such statement shall show each tract of land owned by each surety and the value thereof, and if the statements provided for herein shall indicate that any of such lands have been disposed of or encumbered and the value of the remaining unencumbered or non-exempt lands shall not be sufficient to meet the requirements of this law, then the said Commissioners Court shall require a new bond meeting fully the requirements of this law. The Commissioners Court shall at any time it may deem necessary for the protection of the county, investigate and inquire into the solvency of any surety company or companies issuing a bond or bonds for any depository, and to investigate the value of any of the securities that may be pledged by such depository in lieu of the personal bond; and such Commissioners Court may request any such depository if it deem advisable, to execute a new bond. If said new bond required by the Commissioners Court for any reason as herein specified be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the selection of another depository in the same manner as provided for the selection of a depository at the regular time for such selection. Nothing in this law shall in any manner limit, restrict or prevent the Commissioners Court from requiring any depository to execute a new bond at any time such Commissioners Court may deem it necessary for the protection of the county. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Section 4 of the amendatory act of 1937, shall not be required to the extent cited to the text (article 2566a. of this erred by Federal Deposit Insurance. title), provides that security for deposits

#### Art. 2548. Additional bond

Whenever, after the creation of a county depository, as by this Act provided, there shall accrue to the county or any subdivision thereof, any funds or moneys from the sale of bonds or otherwise, the Commissioners Court of such county at its first meeting after such special funds shall have come into the Treasury, or depository of such county, or so soon thereafter as may be practicable, may make written demand upon the duly accredited and established depository of the county for a special additional bond as such depository in a sum equal to the whole amount of such special fund, to be kept in force so long as such funds remain in such depository. Such extra or special bond may be cancelled and a new bond contemporaneously substituted therefor as such special fund may have been reduced. Such special bond shall at all times be sufficient in amount to cover such special fund then on hand. Upon the failure of such depository to furnish such additional bond within thirty (30) days from the date of such demand, the Commissioners Court may cause such special funds to be withdrawn, upon the draft of the county treasurer from such depository, and cause the same to be deposited in some solvent National bank or State bank whose combined capital stock and surplus is in excess of such special fund, and to leave the same or so much thereof as may not have been expended with such National bank or State bank of last deposit, until

such time that such county depository may have filed with the Commissioners Court the required additional bond, when such special fund or so much thereof as shall not have been expended shall be forthwith returned to and deposited with such county depository. The requiring of such additional or special bond shall be optional with such Commissioners Court. When a banking institution selected, qualified and acting as a county depository shall become insolvent and it shall become necessary to resort to the depository bond or bonds to collect the county and State funds deposited therein, payment shall be made to the county and State pro rata. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2549. 2444 Designating depository

As soon as said bond be given and approved by the Commissioners Court, and the Comptroller, an order shall be made and entered upon the minutes of said Court designating such banking corporation, association or individual banker, as a depository for the funds of said county until sixty (60) days after the time fixed for the next selection of a depository; and thereupon, it shall be the duty of the county treasurer of said county immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collection and settlement thereon. The bond of such county depository or depositories shall stand as security for all such funds. Upon such funds being deposited as herein required, the tax collector and sureties on his bond, shall thereafter be relieved of responsibility of its safekeeping. All county depositories shall collect all checks, drafts and demands for money so deposited with them by the county and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the depository bank, provided that any expense incurred in collection thereof by the depository, which the depository is not allowed or permitted to pay or absorb by reason of any act of Congress of the United States or any regulation by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, shall be charged to and paid by the county. All money collected or held by any district, county or precinct officer in such county, or the officers of any defined district or subdivision in such county, including the funds of any municipal or quasi-municipal subdivision or corporation which has the power to select its own depository, but has not done so, shall be governed by this law, and shall be deposited in accordance with its requirements, and shall be considered in fixing the bond of such depository, and shall be protected by such bond; and all warrants, checks, and vouchers evidencing such funds shall be subject to audit and countersignature as now or hereafter provided by law. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

**Art. 2550. [2445] Deposits not applied for**

If for any reason no applications are submitted by any banking corporation, association or individual banker to act as county depository or in case all applications shall be declined, then in any such case, the Commissioners Court shall have the power, and it shall be their duty to deposit the funds of the county with any one or more banking corporations, associations or individual bankers in the county or in the adjoining counties in such amounts and for such periods as may be deemed advisable by the Court. Any bank or banking concern receiving deposits under this Article shall execute a bond in the manner and form provided for depositories of county funds with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds deposited with such bank or banking concern. [As amended Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

**Art. 2551. [2446] Clearing house to be selected**

When the funds of any county shall be deposited with two or more depositories, the Commissioners Court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

**Art. 2552. [2447] Checks payable at county seat**

It shall be the duty of the depository or depositories to pay, upon presentment at the county seat of the county, or in the case of "time deposits" to pay upon presentment after the expiration of the period of notice agreed upon, all checks or warrants drawn by the county treasurer upon the funds of said county deposited with said depository or depositories, as long as such funds shall be in the possession of such depository subject to such checks or warrants. For every failure to pay such check or warrant at such county seat either upon presentment in case of "demand deposits," or upon presentment after the expiration of the period of notice required in the case of "time deposits" said depository or depositories shall forfeit and pay to the holder of such check ten per cent (10%) of the amount thereof; and the Commissioners Court shall revoke the order creating such depository or depositories. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.

**Art. 2553. [2448] Depository not located at county seat**

If any depository selected by the Commissioners Court be not located at the seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid; and such depository shall cause every check to be paid upon presentation or upon presentation at the expiration of the period of notice in the case of "time deposits" at the place so designated so long as the said depository has sufficient funds to the credit of said county applicable to its payment. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

**Art. 2554. [2449] Warrants, how paid and charged**

It shall be the duty of the county treasurer upon the presentation to him of any warrant, check, voucher, or order drawn by the proper authority, if there be funds sufficient for the payment thereof on de-

posit in the account against which such warrant is drawn, to endorse upon the face of such instrument his order to pay the same to the payee named therein and to charge the same on his books to the fund upon which it is drawn. The county treasurer shall not make an endorsement upon any warrant, check, voucher, or order, upon any funds deposited with said depository or depositories which are designated as "time deposits" until after notice is duly given and the time has expired as required in the contract with said depository in designating said funds as "time deposits." It shall be the duty of such depository to make a detailed monthly statement to the Commissioners Court at each regular term of said Court showing the daily balances to the credit of each of the funds on deposit. In case any bonds, coupons, or other indebtedness of any county by the terms thereof are payable at any place other than the treasury of the county, nothing herein contained shall prevent the Commissioners Court of such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity, provided such payments shall be made in the manner prescribed by law. All checks or warrants issued or drawn by any officer under the provisions of this Act, shall be subject to all the laws and regulations providing for auditing and countersigning and all such laws and regulations are hereby continued in full force and effect. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

**Art. 2555. [2450] May select at subsequent term**

If for any reason, no selection of a depository be made at the time provided by law, the Commissioners Court may, at any subsequent time after twenty (20) days' notice, select a depository or depositories in the manner provided for such selection at the regular time; and the depository or depositories so selected shall remain the depository or depositories until the next regular time for selecting a depository, unless the order selecting and naming such depository be revoked for lawful reasons. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.

**Art. 2556. [2451] New bond may be required**

If the Commissioners Court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

**Art. 2557. [2452] Liability of Treasurer**

The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this Act shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, nor from any responsibility for the funds of the county until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds by him. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.

**Art. 2558. [2458] Applications from adjoining counties**

If there be no bank or banks situated within the county that seeks to be designated as county depository, then in that event the Commis-

sioners Court shall be authorized to advertise for applications from banks in adjoining counties or any other counties in this State in the manner provided by law of this State with reference to advertising in the counties desiring such depositories. When a depository has been selected by the Commissioners Court in the manner as provided herein, said depository shall, within five (5) days after notice of such designation and selection, file with county treasurer of such county a statement designating the place at said county seat where, and the person by whom all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid. [As amended, Acts, 1937, 45th Leg., p. 1298, ch. 484, § 1.]

**Art. 2558a. Depositories for trust funds in hands of county and district clerks—applications**

Section 1. The Commissioners Court of each county is authorized and required at the February term thereof next following each general election to receive applications from any banking corporation, association or individual banker in such county as may desire to be selected as a depository for Trust Funds in possession of the County and District Clerks. Said applications shall be filed with the County Clerk on/or before ten o'clock a. m. on the first day of the term of Court at which said applications are to be received. Said application shall be accompanied by a certified check for not less than one-half of one per cent of the average daily balances of the amount of Trust Funds in the possession of the Clerks during the preceding calendar year which amount shall be determined by the County Clerk on/or before ten (10) days before the applications herein provided for are required to be filed, and a certified check accompanying the application as herein provided for in the amount so determined by the County Clerk shall be sufficient compliance with this provision, which certified check shall be a guarantee of the good faith on the part of the applicant, and that if his application is accepted the bond hereinafter provided for will be entered into. Upon the failure of the banking corporation, association or individual banker that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county shall select another depository as hereinafter provided. In the event any application shall not be accepted, the certified check accompanying the same shall be returned. The check of the applicant whose application is accepted shall be returned when his bond is filed and approved by the Commissioners Court and not until such bond is filed and approved. It shall not be necessary for the county to advertise or give notice that applications will be received as provided by this Statute.

**Entry of applications and selection of depository**

Sec. 2. It shall be the duty of the Commissioners Court at ten o'clock a. m. on the first day of each term at which applications are required to be received to enter said applications on the minutes of the Court and to select a depository for the Trust Funds in the possession of County and District Clerks.

**Qualification of depository**

Sec. 3. Within thirty (30) days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker so selected to qualify in the same manner as now provided by law for the qualification of county depositories.

**Entry of order designating depository; funds deposited; failure to select new depository**

Sec. 4. As soon as said depository has qualified as provided by law and has been approved by the Commissioners Court, said Court shall make and enter an order upon the minutes, designating such banking corporation, association, or individual banker as County Depository for Trust Funds until the designation and qualification of a successor, and thereupon it shall be the duty of the County and District Clerks of such county to deposit all Trust Funds in their possession with said depository in the manner hereinafter provided; provided, in the event, a new depository has not been selected and qualified by April 15th succeeding the term of Court at which a depository is required to be selected as required by this Act, then the term of such depository shall end and all Trust Funds due or on deposit shall be paid to the Clerk in whose name the account is carried.

**Advertisement for applications under certain conditions**

Sec. 5. If for any reason there shall be submitted no application by any banking corporation, association or individual banker in the county, or in case there shall be no application for the entire amount of Trust Funds, or in the event all applications submitted have been rejected by the Commissioners Court, or in the event a depository selected has failed to qualify, or in the event that the depository shall become insolvent, or in the event a new depository has been selected on account of the failure of the regular depository to execute a new bond as hereinafter provided, then in either event, the Commissioners Court shall advertise for applications from any banking corporation, association, or individual banker within the State of Texas, and may select a depository, which depository shall qualify in the manner above provided. Notice of the selection of a depository as provided by this Act shall be published once each week for two (2) successive weeks in a newspaper of general circulation within the county, if there be such newspaper. If there is no newspaper published in the county, then the same shall be posted at the courthouse for said period. In the discretion of the Commissioners Court said notice may also be published in any newspaper outside of the county for the same length of time.

**Provision for payment on presentment of checks; penalty**

Sec. 6. It shall be the duty of the depository to provide for the payment at the county seat of the county upon presentment all checks drawn by the County or District Clerk upon the funds deposited in the name of such Clerk as long as such funds shall be in the possession of the depository subject to such checks. For every failure to pay such check at such county seat upon presentment, said depository shall forfeit and pay to the holder of such checks ten per cent (10%) of the amount thereof.

**Depository not located at county seat**

Sec. 7. If any depository selected by the Commissioners Court be not located at the seat of such county, said depository shall file with the County Clerk of such county, a statement designating the place at said county seat where, and the person, firm or corporation by whom, all the deposits may be received from the Clerks for such depository, and where and by whom in said county seat all checks drawn on such depository will be paid and such depository shall cause every check to be paid upon presentation at the place so designated so long as the

said depository has sufficient funds to the credit of such funds applicable to their payment.

**New bond**

Sec. 8. If the Commissioners Court shall at any time deem it necessary for the protection of the Trust Funds, it may require any depository to execute a new bond. If said new bond is not filed within fifteen days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the election of another depository in the manner provided for the selection of a depository as provided in this Act.<sup>1</sup>

**County and District Clerks not responsible for loss of trust funds through depository's failure or negligence**

Sec. 9. The County and District Clerks shall not be responsible for any loss of the Trust Funds through failure or negligence of any depository, but nothing in this Act<sup>1</sup> shall release any County or District Clerk for any loss resulting from any official misconduct or negligence on his part nor from any responsibility for such Trust Funds until a depository shall be selected and the funds deposited therein nor for any misappropriation of such funds by him. Upon the deposit in the legally selected depository of the Trust Funds by any County or District Clerk, such Clerk shall thereafter be relieved of the safekeeping of said funds.

**Loss of deposit on account of insolvency of depository or other cause; liability of county**

Sec. 10. In the event of the insolvency of any depository, or if for any reason, on account of the deposit of the Trust Funds with any depository, any part of said funds are lost, the county shall be liable to the person to whom any part of said Trust Funds is due for the full amount of said funds due such person.

**Duty to deposit; Trust Fund account**

Sec. 11. Any County or District Clerk having the custody by law of any money that may have been deposited in court to abide the result of any legal proceeding, which amount is to be in his possession for a period longer than three (3) days, shall deposit the same in the county depository for Trust Funds, if there be such a depository. The funds deposited by the Clerk shall be carried as a Trust Fund account in the name of the Clerk making the deposit, and same shall be subject to withdrawal by the Clerk under the conditions set out in the succeeding paragraph of this Act.<sup>1</sup>

**Withdrawal of deposits by check**

Sec. 12. Except upon an order of the Judge of the Court in which funds have been deposited, no check shall be drawn on said depository for any part of said funds by the Clerk except for payment to the person or persons to whom the amount of said check is due. All checks drawn by the Clerks shall show the style and number of the proceeding in which said money was deposited with the Clerk.

**Transfer of funds to new depository**

Sec. 13. If at any time, a new depository has been selected and qualified, it shall be the duty of the County and District Clerks to transfer to the new depository all funds in said depository in the name of such Clerk and for this purpose a check may be drawn on such funds by such Clerks.

## Failure to select depository

Sec. 14. In the event there has been no selection of a county depository for Trust Funds, each County or District Clerk having the custody by law of any money, evidence of debt, script, instrument of writing, or other legal proceeding shall seal up in a secure package the identical money or other article received by him and deposit the same in some iron safe or bank vault. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 2.]

<sup>1</sup> This article and Pen.Code, art. 383a.

## CHAPTER THREE—CITY DEPOSITORIES

Art.

2566a. Security for deposits not required to extent covered by Federal Deposit Insurance [New].

Art. 2559. [2454] Council to take applications for depository

The governing body of every city, town and village in the State of Texas, incorporated under either the General or Special Laws, including those operating under special charter or amendments of charter adopted pursuant to the "Home Rule" provisions of the Constitution, is authorized to receive applications for the custody of city funds from any banking corporation, association or individual banker doing business within the city, town or village that may desire to be selected as a depository of the city, town or village. The school funds, from whatever source derived of incorporated cities, is part of the city funds and is subject to the provisions of this Act. Notice that such applications will be received shall be published by the City Secretary not less than one (1) nor more than four (4) weeks before said meeting in some newspaper published in that city. Any banking corporation, association or individual banker doing business in the city, town or village desiring to apply to be designated as a depository of the funds of such city, town, or village shall deliver to the city secretary on/or before the day of such meeting designated by such published notice, its application for such funds. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Articles 2559-2566a, effective August 1, 1937.

Section 5 of the amendatory act of 1937, cited to the text, reads as follows: "Sec. 5. This Act shall not become operative until on and after August 1, 1937, and all banks that are now designated as county depositories or the depositories for any city, town or village, or the depository for any trust funds shall be required to file new applications and be re-designated under the terms of this Act and the County Commissioners Court of each county and

the governing body of any city, town, or village in this State is hereby authorized to receive applications and to designate new banks as depositories under this Act for the unexpired depository year. All contracts made by County Commissioners Courts of this State and the governing bodies of any incorporated city, town or village with banks as depositories under the laws governing said contracts prior to the passage of this Act and all proceedings in connection therewith are hereby in all things approved and validated."

Art. 2560. [2455] Award and bond

Upon considering the applications submitted, the governing body shall select as the depository or depositories of such funds the banking corporations, association or individual banker or bankers offering the most favorable terms and conditions for the handling of such funds. The governing body of such city, town or village shall have the right



to reject any and all applications and readvertise for any applications. The governing body of such city, town or village shall have the power to determine and designate the character and amount of city funds which will be deposited by it in said depositories that shall be "demand deposits" and what character and amount of funds shall be "time deposits," and may contract with said depositories in regard to the payment of interest on "time deposits" at such rate or rates as may be lawful under any Act of Congress of the United States and any rule or regulations that may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. The term "demand deposits," as used herein, shall mean any deposit which is payable on demand, and the term "time deposits," as used herein, shall mean any deposit with reference to which there is in force a contract, that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. Within five (5) days after the selection of such depository or depositories, it shall be the duty of the banking corporation or corporations, association or associations, individual banker or bankers so selected to qualify as city depository in one or more of the following ways at the option of the governing body of such city, town or village:

(a) By executing and filing with the governing body a bond or bonds, payable to the city, to be approved by the governing body, said bond to be signed by not less than five (5) solvent sureties who shall own unencumbered real estate in this State not exempt from execution under the Constitution and Laws of this State of a value equal to or in excess of the amount of said bond, or of a value equal to or in excess of the amount of said bonds when there is more than one bond; and said bond or bonds shall in no event be for less than the total amount of the revenue of such city for the next preceding year for which said bond or bonds are made. The sureties shall file with the city at the time of filing said bond or bonds a statement containing a description of the unencumbered and non-exempt lands owned by them sufficient to identify such lands on the ground, and such statement shall remain on file with the City Secretary attached to such bond or bonds, which statement shall contain a fair estimate of the value of each tract of land so listed, together with the value of the improvements thereon.

(b) By having issued and executed by some solvent surety company or companies authorized to do business in the State of Texas, such bond or bonds, as provided by law, to be in the amount and payable as provided in subdivision (a) hereinabove, which said surety bond shall be approved by the governing body and filed with the City Secretary.

(c) By executing and filing with the governing body a bond or bonds in an amount and payable as provided in subdivision (a) hereinabove to be approved by the governing body and filed with the City Secretary of such city, said bond or bonds to be signed by not less than five (5) solvent sureties who shall prepare and file with the governing body, at the time of the filing of said bond, an itemized and verified financial statement, which shall show the aggregate net worth of all to be equal to or in excess of the amount of such bond or bonds as hereinabove provided for.

(d) In lieu of such personal bonds or surety bonds as above specified, said banking corporation or corporations, association or associations or individual banker or bankers so selected as the city depository may pledge and said depository is hereby authorized to pledge with

the governing body of such city for the purpose of securing such city funds, securities of the following kind in an amount equal to the amount of said city funds on deposit in said depository bank or banks, to wit: United States Bonds, Certificates of Indebtedness of the United States, Treasury notes of the United States and other evidences of indebtedness of the United States which are guaranteed as to both principal and interest by the United States Government, bonds of the State of Texas, or of any county, city, town, independent school district, common school district or other school districts in the State of Texas, or bonds issued under the Federal Farm Loan Act or road district bonds, bonds, pledges or other evidences of indebtedness issued by the Board of Regents of the University of Texas, notes or bonds secured by mortgages insured and debentures issued by the Federal Housing Administrator of the United States Government; bank acceptances of banks having a capital stock of not less than Five Hundred Thousand Dollars (\$500,000), and bonds issued by municipal corporations in Texas; and said city may accept said securities in lieu of such personal or surety bonds, which securities so pledged shall be deposited as the governing body may direct. It is provided, however, that such securities so pledged shall be approved as to kind and value by the governing body.

When the securities pledged by the depository bank to secure city funds shall be in excess of the amount required under the provisions of this Act, the governing body of such city, shall permit the release of such excess; and when the city funds deposited with such depository bank shall for any reason increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the governing body so that the securities pledged shall at no time be of a value of less than the total amount of city funds on deposit in said depository bank. Provided, however, the determination of such value shall be in the discretion of the governing body whose decision shall be final and binding on such depository. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law and are approved by the governing body. Upon the request of such depository bank, the governing body shall surrender interest coupons or other evidence of interest, when due, on securities deposited with said governing body by such depository bank, provided said securities remaining pledged are ample to meet the requirements of this Act and of such governing body.

The condition of the personal bond or bonds or surety company bond or contract for securities pledged as hereinabove provided, shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon any "demand deposit" account in said depository or upon presentation upon any "time deposit" after the expiration of the period of notice required in the case of "time deposits," by the City Treasurer of the city and that said city funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county in which such city, town, or village is located.

It shall be the duty of the governing body to investigate and inquire into the solvency of each and every surety on any personal bond or bonds so filed by such city depository and accepted by the governing body and approved as required by law, at least twice during each and every year such bonds are effective and in force, and for that purpose shall have authority to require each surety to render an itemized and verified financial statement under oath showing his true financial con-

dition. If any such statement or statements indicate that any of said sureties have become insolvent, or their net worth depreciated below the amount required by law as such sureties, or if any of the assets listed are shown to be, or are known to be depreciated, or their value in any way impaired, then and in any of such events the governing body shall require a new bond meeting fully the requirements of this law; and in case of a bond or bonds, the sureties on which are required to own unencumbered and non-exempt real estate as herein provided, such statement shall show each tract of land owned by each surety and the value thereof, and if the statements provided for herein shall indicate that any of such lands have been disposed of or encumbered and the value of the remaining unencumbered or non-exempt lands shall not be sufficient to meet the requirements of this law, then the said governing body shall require a new bond meeting fully the requirements of this law. The governing body shall at any time it may deem necessary for the protection of the city, investigate and inquire into the solvency of any surety company or companies issuing a bond or bonds for any depository, and to investigate the value of any of the securities that may be pledged by such depository in lieu of the personal bond; and such governing body may require any such depository, if it deems advisable to execute a new bond, or to deliver into pledge additional or other securities. If said new bond or securities required by the governing body for any reason, as herein specified, be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the governing body may proceed to the selection of another depository in the same manner as provided for the selection of a depository at the regular time for such selection. Nothing in the law shall in any manner limit, restrict, or prevent the governing body from requiring any depository to execute a new bond at any time such governing body may deem it necessary for the protection of the city. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.

#### Art. 2561. [2456] Designating depository, etc.

As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this Act for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and immediately upon the receipt of the money thereafter, he shall deposit the same with said depository to the credit of the city. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this Act, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the governing body shall, after the notice published in the manner hereinbefore provided, proceed to receive new applications and select another depository. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

#### Art. 2562. [2457] Warrant and checks paid

The city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the depository belonging to the fund upon which said warrant is drawn and

out of which the same is payable, shall draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and to take up said warrant, and charge the same to the fund upon which it is drawn. In no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same, nor shall said city treasurer draw any check upon any funds deposited with said depository or depositories which are designated as "time deposits" until after notice is duly given and the time has expired, as required in the contract with said depository in designating said funds as "time deposits." No money belonging to the city shall be paid out of the city depository, except upon checks of the city treasurer. All such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein shall prevent the governing body from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.

**Art. 2563. [2458] May select at subsequent meeting**

If for any reason no selection of a depository is made at the time fixed by this Act, said governing body may, at any subsequent meeting, after notice published as hereinbefore provided, receive applications and select a depository in the manner herein set out, and the banking corporation, association, or individual banker so selected shall remain the depository until the next regular term for the selection of a depository unless the order selecting it be revoked for the causes specified in this Act. If the governing body shall at any time deem it necessary for the protection of the city, it may by resolution, require the depository to execute a new bond; and upon failure to do so within five (5) days after the service of a copy of the resolution on said depository, said body may proceed to select another depository in the manner hereinbefore provided. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.

**Art. 2564. [2458] Liability of treasurer**

The City Treasurer shall not be responsible for any loss of the city funds through negligence, failure or wrongful act of such depository, but nothing in this Act shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part nor from responsibility for the said funds at any time, when, for any reason, there shall be no city depository, nor until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds in any manner by him. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.

**Art. 2565. [2459] Restrictions upon drawing**

No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary, except where cities are operating under charter provisions that provide for the drawing of checks or warrants on the depository or city funds in a different manner than is herein provided. No warrant shall be drawn by the mayor and secretary upon any of the special

funds created for the purpose of paying the bonded indebtedness of said city, in the hands of the City Treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No City Treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose of paying interest due on said bonds, the principal of said bonds or for the purpose of making an investment of said funds according to law. The treasurer shall report to the council on or before its first regular meeting in July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Art. 2566. [2460] Definitions of terms

All provisions of this Act shall apply to towns and villages incorporated under the General Laws of Texas, as well as to cities so incorporated, and the terms "City Secretary," and "Secretary" shall be construed to include the clerk or secretary of such towns or villages; the term "City Treasurer" shall be construed to include the treasurer of such towns and villages and the term "city" shall be construed to include towns and villages. As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.

Art. 2566a. Security for deposits not required to extent covered by  
Federal Deposit Insurance

Notwithstanding any provisions of this Act<sup>1</sup> requiring securities for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12b of the Federal Reserve Act as amended, or any amendments thereto.<sup>2</sup> [Acts 1937, 45th Leg., p. 1298, ch. 484, § 4.]

<sup>1</sup> Articles 2544-2566.

<sup>2</sup> 12 U.S.C.A. § 264.

Section 5 of the act of 1937, cited to the text, see note under article 2544, ante.

## TITLE 49—EDUCATION—PUBLIC

Chap.

20. Teachers' Retirement [New].

## CHAPTER ONE—UNIVERSITY OF TEXAS

## 2. FUNDS AND PROPERTIES

Art. 2595a. Donations of tax delinquent lands; conditions; liens [New].

Art.

2603c. 1. Validation of proceedings and bonds purchased by Federal Agencies [New].

## 1. BOARD OF REGENTS

Art. 2585. 2639, 3846 Powers

Board of Trustees of "Cotton Research Award Fund," president as member of, see article 165—4.

Art. 2589a. Construction, equipment, and control of dormitories

Dormitories, cottages and stadiums, self liquidating, see art. 2909a.

## 2. FUNDS AND PROPERTIES

Art. 2595a. Donations of tax delinquent lands; conditions; liens

Section 1. The provisions of this Act shall apply to the University and to branches thereof, which branches may be situated in any City in the State of Texas having a population of not less than one hundred thousand and not more than one hundred and fifty thousand according to the last Federal Census.

Sec. 2. When the owners of any real estate situated in this State have not paid the taxes thereon for a period of three years and donate such land to the Board of Regents of the University of Texas for the use of the said University or any branch of the said University that may be designated by such donor, the said land may be accepted by the said Board of Regents upon the following terms, to be evidenced by a Resolution by said Board of Regents, to-wit:

First: The said lands must be assessed for taxation at least three times the amount of taxes due thereon.

Second: The said lands and the proceeds thereof shall be applied exclusively to the uses of the beneficiary school as a State owned and operated institution of higher education.

Third: Upon the Commissioners' Court of the County in which the lands, so donated, are situated, certifying to the Board of Regents its approval of such acceptance; and that the advantages to the people from accepting the donation exceed the benefit that would be derived from the sale of said lands at tax sale or under decree of Court.

Fourth: Upon City Council of the City or Town, if said lands be located within the limits of an incorporated City or Town, extending to the Board of Regents a certificate similar to the one herein required of Commissioners' Courts.

Fifth: The said lands, so accepted, shall be used exclusively for the University or the branch thereof as designated by the donor and

shall be sold at such time, and under such conditions, and for such amounts as in the judgment of the Board of Regents are for the best interest of the beneficiary school. While held by the Board of Regents they may be leased or rented as to the said Board seems best; and while so held, shall not be liable for any tax and no claim therefor shall be asserted against the said Board nor the lands so accepted, nor shall any action be instituted to compel payment of any tax during the time the said lands, or the proceeds thereof, are held by the Board of Regents for the use and benefit of the University of Texas or the beneficiary college. [Acts 1937, 45th Leg., 2nd C.S., p. 1867, ch. 4.]

Effective Nov. 3, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to enable the Board of Regents of the University of Texas to accept, on behalf of the State, donation of lands on which taxes are past due, and to appropriate the same to the use and benefit of

the University of Texas or any branch thereof as same may be directed by the donor and to protect the University of Texas or any branch thereof from enforcement of liens for land so donated, and setting forth the terms and conditions on which said lands may be accepted, and enforcements of liens suspended, and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1867, ch. 4.]

**Art. 2603a. Board for lease of oil and gas land, powers and duties**

Sec. 4. Whenever there shall be such demand for the purchase of oil and gas in any University land as will reasonably insure that said oil and gas may be sold advantageously, the Board shall place said oil and gas in said lands on the market in separate tracts of such area and extent as the Board may determine most suitable for the profitable marketing thereof, but in no event shall any tract in which oil and gas is offered for sale as a unit exceed an area of six thousand (6,000) acres. The sale of said oil and gas shall be made at public auction and shall be held in Austin, Texas, at any hour between ten o'clock A. M. and five o'clock P. M. The Board shall cause to be advertised a brief description of the lands upon which the oil and gas is proposed to be sold, such description to carry the block and survey numbers, or parts of surveys to be combined in one tract or unit; the method and the time and place of the sale; the primary term of the lease proposed to be executed thereon; the royalty to be paid; and such other matters as in the judgment of the Board are deemed advisable. The advertisement shall be made:

(a) By insertion in two or more papers of general circulation in this State;

(b) By mailing a copy thereof to the County Clerk and the County Judge in the county in which the land is situated;

(c) In addition to the two foregoing mandatory provisions, the Board in its discretion may cause said advertisement to be placed in oil and gas journals in and out of the State and to be mailed generally to such persons as they think might be interested. [As amended Acts 1937, 45th Leg., p. 280, ch. 148, § 1.]

Amendment of 1937, effective April 14, 1937.

Section 8 of the amendatory act of 1937 provides that if any provision of the act

is held unconstitutional, the balance of the act shall not be affected thereby and section 9 declares an emergency making the act effective on and after its passage.

Sec. 5. The oil and gas in each tract shall be offered for sale for a bonus in addition to the stipulated royalty. Each tract shall be offered separately. Each bid shall be subject to such royalty as is specified in the official advertisement preceding the sale, but in no event shall be less than one-eighth of the gross production of oil and gas in the land; and shall further be subject to the payment of an annual rental

after the first year of not less than ten (10¢) cents per acre, payable each year in advance, unless the royalties received from such land during the preceding year shall equal or exceed the amount of the annual rental payment; and shall further be subject to the payment of a special fee equal to one (1%) per cent of the total sum bid, which special payment shall constitute a special fund from which the Board is hereby authorized and directed to defray the expenses of the sale, including the payment of the services of the auctioneer crying the sale. The highest bidder shall pay to the Board on the day of sale twenty-five (25%) per cent of the bonus bid, and the fee to defray the expenses herein provided, and the balance shall be paid on notification of the acceptance of the bid. As amended Acts 1937, 45th Leg., p. 280, ch. 148, § 2.

Amendment of 1937, effective April 14, 1937.

Sec. 6. [Repealed by Acts 1937, 45th Leg., p. 280, ch. 148, § 3.]  
Effective April 14, 1937.

Sec. 7. If any one of the bidders at the sale at public auction shall have offered a reasonable and proper price for any tract offered not less than the price fixed by the Board, the land advertised may be leased for oil and gas purposes under the terms of this Act and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. All bids may be rejected by the Board. [As amended Acts 1937, 45th Leg., p. 280, ch. 148, § 4.]

Amendment of 1937, effective April 14, 1937.

Sec. 8. (a) If the Board shall determine that a satisfactory bid has been offered for said oil and gas, it will make an award to the bidder offering the highest price therefor, and a lease shall be executed by the Commissioner of the General Land Office, a duplicate copy of such lease to be filed in the General Land Office.

(b) The primary term of the lease, as determined by the Board prior to the promulgation of the advertisement, shall in no case exceed five (5) years, and each lease shall provide that the lease shall terminate at the expiration of its primary term, and shall provide that if oil and/or gas is being produced in paying quantities from the premises before termination of the primary term, said lease shall continue in force and effect as long as such oil and/or gas is being so produced. The lease shall include such additional provisions and regulations, not inconsistent with the provisions of this Act, as the Board may prescribe to preserve the interests of the State and safeguard the University funds.

(c) Whenever in the discretion of the Board it is to the best interest of the University and its Permanent Fund that production from any lease for a limited period of time should be prorated or reduced, the said Board is hereby given authority to execute the necessary contract or contracts with the lessee or lessees and their assignees to effectuate the same and to carry out the intention of this section. [As amended, Acts 1937, 45th Leg., p. 280, ch. 148, § 5.]

Amendment of 1937, effective April 14, 1937.

Sec. 14. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized, shall be filed in the General Land Office and constitute archives thereof. Payments hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State



Treasurer for deposit to the credit of the Permanent University Fund all bonus and royalty payments, and who shall transmit to the State Treasurer for deposit to the credit of the Available University Fund all payments for delay in drilling, all filing, assignment and relinquishment fees and all other payments, except the one (1%) per cent special fee payment for defraying the expenses of auction sales as provided for in Section 5 hereof; and who shall transmit to the Comptroller of the University of Texas the said special one (1%) per cent fee payment, which shall be disbursed by the said Comptroller for said purpose, after approval thereof by the Board. As amended Acts 1937, 45th Leg., p. 280, ch. 148, § 6.

Amendment of 1937, effective April 14, 1937.

Sec. 18. The Board shall adopt such forms and contracts and shall promulgate such rules and regulations not inconsistent with the terms of this Act, as in its judgment will best effectuate the purpose of this Act and best protect the University, its lands and the income therefrom. A majority of the Board shall have the power to act for the Board. The Board shall have the right to withdraw any lands advertised for lease prior to the hour fixed for receiving bids. Any and all, or parts of, laws in conflict with this Act are hereby repealed. [As amended Acts 1937, 45th Leg., p. 280, ch. 148, § 7.

Amendment of 1937, effective April 14, 1937.

#### Art. 2603c. Borrowing from Federal Agencies and other sources, private or public, authorized

Section 1. That the Board of Regents of the University of Texas and its branches, and the Board of Directors of the Agricultural and Mechanical College, and its branches, and the Board of Directors of Texas Technological College, and the Board of Regents of the State Teachers College, and the Board of Regents of the Texas State College for Women, and the Board of Directors of the College of Arts and Industries are hereby severally authorized and empowered to construct or acquire through funds or loans to be obtained from the Government of the United States, or any agency or agencies thereof, created under the National Recovery Act, or otherwise created by the Federal Government or from any other source private or public, without cost to the State of Texas, and accept title, subject to such conditions and limitations as may be prescribed by each of said Boards, dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasias, athletic buildings and stadia, and such other buildings as may be needed for the good of the institution and the moral welfare and social conduct of the students of such institutions when the total cost, type of construction, capacity of such buildings, as well as the other plans and specifications have been approved by the respective Governing Boards; provided, however, that the Legislature shall never make an appropriation out of the general fund of this State, either in the regular appropriation bill or in a supplemental or emergency appropriation bill, for the purpose of equipping or for the purpose of purchasing and installing any utility connections in any of the buildings erected under and by virtue of the provisions of this Act. As amended Acts 1939, 46th Leg., p. 262, § 1.

Effective June 7, 1939.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of laws to the extent that they are in conflict herewith.

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Sec. 3. Subject to the above restrictions, each of said Boards is given complete discretion in fixing the form, conditions and details of such bonds or notes. Any bonds or notes issued hereunder shall not be an indebtedness of the State of Texas, but shall be payable solely from the revenues to be derived from the operation of said buildings; provided that such bonds may be refinanced by the said Boards whenever such action is found by the Board to be necessary.

Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attached in suit or litigation which is pending at the time this Act becomes a law, or which may be filed within thirty (30) days after this Act becomes a law. As amended Acts 1939, 46th Leg., p. 263, § 1.

Effective April 19, 1939.

that the act should take effect from and after its passage.

Section 2 of the amendatory act of 1939 declared an emergency and provided

#### Art. 2603c1. Validation of proceedings and bonds purchased by Federal Agencies

That severally all the acts of the Board of Regents of the University of Texas, the Board of Directors of the Agricultural and Mechanical College of Texas, the Board of Directors of Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Regents of the Texas State College for Women, and the Board of Directors of the Texas College of Arts and Industries, heretofore had in the authorization, issuance, and delivery of bonds, notes or warrants, evidencing loans made to accomplish purposes authorized under the provisions of Chapter 5, Acts of the Second Called Session of the Forty-third Legislature, and amendments thereto,<sup>1</sup> and all other laws of the State of Texas, relating to such bonds, notes or warrants, including the construction, acquisition and equipping of dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasias, athletic buildings and stadia, and other buildings, are hereby in all things validated. Any such bonds, notes or warrants heretofore issued, or that may be issued hereafter, pursuant to any order or resolution of any such Board of Directors or Board of Regents heretofore adopted, are in all things fully validated, and such bonds, notes or warrants, the pledge of the revenues by any such Board of Directors or such Board of Regents to secure and assure the payment of such obligations, and the provisions and covenants as to rates and charges supporting such pledges, are in all things ratified, and such bonds, notes or warrants are hereby declared to be the valid and binding special obligations of such Board of Directors or such Board of Regents, to be paid out of revenues pledged and not otherwise obligations of such respective institutions. It is hereby made the duty of said Boards of Directors and of said Boards of Regents to fix, maintain and collect charges or rates, sufficient for a reasonable reserve and to pay the interest as it accrues and the principal as it matures of any such bonds, notes or warrants heretofore or hereafter authorized by such Boards.

Provided, however, that the provisions of this Act shall apply only to such bonds, notes, or warrants as have heretofore or may hereafter be purchased by the Government of the United States or some agency thereof, or which bonds, notes, or warrants are under con-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

tract of purchase by the Federal Government or any agency thereof. Acts 1939, 46th Leg., p. 689, § 1.

<sup>1</sup> Article 2603c.

Effective June 7, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act relating to the subject of bonds, notes and warrants heretofore purchased or which may be hereafter purchased by the Government of the United States or any agency thereof and issued by the Board of Regents of the University of Texas, the Board of Directors of the Agricultural and Mechanical College, the Board of Directors of the Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Regents of the Texas State College for Women, and the

Board of Directors of the Texas College of Arts and Industries, under Chapter 5, Acts of the Second Called Session of the Forty-third Legislature and amendments thereto, and all other laws, including the validating of the bonds, warrants and notes issued by said Boards, the resolutions and other proceedings authorizing the issuance, and the provisions made for the payment of principal and interest of such bonds, warrants and notes; and making it the duty of said Boards to fix, maintain and collect charges or rates sufficient to pay interest and principal as it accrues and matures on bonds, warrants and notes heretofore or hereafter issued, and for reasonable reserves; and declaring an emergency. Acts 1939, 46th Leg., p. 689.

## CHAPTER TWO—AGRICULTURAL AND MECHANICAL COLLEGE

Art.

2613a—3. Lease of lands for oil, gas or other mineral development authorized [New].

### Art. 2610. 2656—60 The Board of Directors

Board of Trustees of "Cotton Research Award Fund," president as member of, see article 165—4.

### Art. 2613. [2664—2676] Powers and duties

Research for new uses for cotton, see article 165—4.

### [Art. 2613a—1. Permanent improvements authorized]

Dormitories, cottages and stadiums, see also, art. 2909a.

### Art. 2613a—3. Lease of lands for oil, gas or other mineral development authorized

Section 1. That the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to lease for oil and/or gas and/or sulphur and/or other mineral development to the highest bidder at public auction all lands used for experimental stations and all other lands under its exclusive control or any part thereof now owned by the State of Texas and acquired for the use of the Agricultural and Mechanical College of Texas and its divisions or that may hereafter be acquired for the use of the Agricultural and Mechanical College of Texas and its divisions. Any amounts received under and by virtue of this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the "Agricultural and Mechanical College of Texas Special Mineral Fund," and any funds placed therein shall be appropriated by the Legislature of the State of Texas in its regular biennial appropriation bill exclusively for the Agricultural and Mechanical College of Texas and its branches or divisions; provided, the amounts received as bonuses and rentals between the effective date of this Act and August 31, 1937, are

hereby appropriated to the Agricultural and Mechanical College of Texas to be expended as may be deemed proper by the Board of Directors of said College; provided, however, that the amounts received prior to August 31, 1937, as bonus money and rental money from leases of the land embraced in Experimental Station No. 4, located in Senatorial District No. 4, may be expended by the Board for the necessary improvements and maintenance of Experimental Station No. 4, and the Board is authorized to expend whatever amount they may deem necessary for improvements, livestock and maintenance of the Piney Woods Livestock Experimental Station in Senatorial District No. 4; provided, however, that any royalties received shall be placed in the special fund provided. All moneys realized from royalties accruing under the terms of this Act shall be used exclusively for the purpose of creating a permanent improvement fund, the income from which shall be expended under the direction of the Board of Directors of the Agricultural and Mechanical College of Texas in erecting permanent improvements for the College and its branches and divisions.

#### **Division of lands into lots or blocks**

Sec. 2. The Board is hereby authorized to cause said lands to be surveyed or subdivided into such tracts, lots or blocks as will, in their judgment, be most conducive and convenient to facilitate the advantageous sale of lease for oil, gas, sulphur, and/or other minerals thereof and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board is further authorized to obtain authentic abstracts of title to all of said lands as they may deem necessary from time to time and to take such steps as may be necessary to perfect a merchantable title to said lands in the State of Texas.

#### **Advertising for lease**

Sec. 3. Whenever, in the opinion of the Board, there shall be such a demand for the purchase of oil, gas, sulphur or other mineral leases on any tract or part of any tract of land as will reasonably insure an advantageous sale, the Board shall place such oil, gas, sulphur or other mineral leases on said land on the market in such tract or tracts, or any part thereof, as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil, gas, sulphur or other minerals is proposed to be leased. Such advertisement shall be made by inserting in two or more papers of general circulation in this State and in addition the Board may, in its discretion, cause said advertisement to be placed in an Oil & Gas Journal published in and out of the State, and also mail copies of such proposals to the county judge of the county where said lands are located, and mail copies of such proposals to such other persons as the Board might think would be interested therein.

The Board may sell the lease or leases to the highest bidder at public auction at the Agricultural and Mechanical College of Texas, College Station, Texas, at any hour between 10:00 a. m. and 5:00 p. m. The Board shall have the right to reject all bids. However, the highest bidder shall pay to the Board on the day of the sale twenty-five per cent (25%) of the bonus bid and the balance of the bid shall be paid to the Board within twenty-four (24) hours after being notified that the bid has been accepted. Payments shall be paid in cash, certified check or cashier's check, as the Board may direct; provided, the failure to pay the balance of the amount bid will forfeit to the Board the twenty-five per cent (25%) paid.

#### **Bids for leases**

Sec. 4. A separate bid shall be made for each tract or subdivision thereof. No bids shall be accepted which offer a royalty of less than one-

eighth (1/8th) of the gross production of oil, gas, sulphur and other minerals in the land bid upon and this minimum royalty may be increased at the discretion of the Board. Every bid shall carry the obligation to pay an amount not less than One Dollar (\$1.00) per acre for delay in drilling or development; such amount to be fixed by the Board in advance of the advertisement and shall be paid every year for five (5) years unless in the meantime production in paying quantities is had upon the land or said land is re-leased by the lessee.

#### Regulations on lease

Sec. 5. If in the opinion of the Board any one of the bidders shall have offered a reasonable and proper price for any tract and not less than the price fixed by the Board, the lands advertised may be leased for oil, gas, sulphur and/or other mineral purposes under the terms of this Act, and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. In the event no bid is accepted by the Board at public auction any subsequent procedure for the sale of oil and/or gas and/or sulphur and/or other mineral leases shall be in the manner above provided. Provided that no lease for oil, gas, sulphur, and/or other minerals shall be made by said Board which will permit the drilling or mining for oil and/or gas and/or sulphur and/or other minerals within less than three hundred (300) feet of any building on said land, without the consent of the Board, and further providing that in making any lease on any experimental station and/or farm the lease shall provide that the operations for oil, gas and other minerals shall not in any way interfere with the land as an experimental station and shall not cause the abandonment of said property or its use for experimental farm purposes, and the lessee operating said property shall drill and carry on his operations in such a way as not to cause the abandonment of said property for experimental farm purposes and any such leased property shall be subject to the use by the State of Texas for all experimental purposes and said Board shall continue to operate said experimental station.

#### Acceptance of lease; termination

Sec. 6. If the Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur and/or other mineral lands it shall accept the same and reject all other bids and file said accepted bid in the General Land Office. Whenever the royalties shall amount to as much as the yearly payments as fixed by the Board, the yearly payments may be discontinued. If before the expiration of five years oil and/or gas and/or sulphur and/or other minerals shall not have been produced in paying quantities, the lease shall terminate, unless extended as hereinafter provided.

#### Award of lease to highest bidder; termination; extension

Sec. 7. (a) If the Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur and/or other minerals, it will make an award to the bidder offering the highest price therefor, and a lease shall be filed in the General Land Office.

(b) The exploratory term of the lease as determined by the Board prior to the promulgation of the advertisement shall in no case exceed five (5) years, and each lease shall provide that the lease will terminate at the expiration of its exploratory term unless by unanimous vote of members of the Board such lease may be extended for a period of three (3) years, which lease may be extended where the Board finds that there is likelihood of oil, gas, sulphur and/or other minerals being discovered thereon by lessees, and that such lessees have proceeded with diligence to protect the interest of the State; provided, however, that if oil, gas,

sulphur and/or other minerals are being produced in paying quantities from the premises, said lease shall continue in force and effect as long as such oil, gas, sulphur and/or other minerals are being so produced. Provided, that no extension hereunder may be made by the Board until the last thirty (30) days of the original term of the lease. The lease shall include such additional provisions and regulations as the Board may prescribe to preserve the interest of the State, but not inconsistent with the provisions of this Act.

(c) Whenever in the discretion of said Board, it is deemed for the best interest of the State to extend a lease issued by said Board, the Board is hereby granted and given full authority by unanimous vote to extend said lease for a period not to exceed three (3) years, upon the condition that the lessee shall continue to pay yearly rental as provided in the lease and such additional terms as the Board may see fit and proper to demand. The Board is hereby given full authority to extend such lease and execute an extension agreement therefor.

(d) Whenever in the discretion of the Board, it is for the best interest of the State to prorate, or reduce production of any land, said Board shall have and is hereby given authority to execute the necessary contract to carry out such purpose.

#### **Rentals under lease**

Sec. 8. If, during the term of any lease issued under the provisions of this Act, the lessee shall be engaged in actual drilling operations for the discovery of oil, gas, sulphur and/or other minerals on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil, gas, sulphur, and/or other minerals are discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil, gas, sulphur and/or other minerals are produced in paying quantities from such tract. In the event of the discovery of oil, gas, sulphur and/or other minerals on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease to properly develop the same, to the extent that a reasonably prudent operator would do under the same and similar circumstances.

#### **Rights of purchaser; assignments**

Sec. 9. Title to all rights purchased may be held by the owners so long as the area produces oil, gas, sulphur and/or other minerals in paying quantities. All rights purchased may be assigned. All assignments shall be filed in the General Land Office within one hundred days from the date of the first acknowledgment thereof, accompanied by ten cents (10¢) per acre for each acre assigned and if not so filed and payment made, the assignment shall not be effective. All rights to any whole tract or to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed with the Chairman of the Board accompanied with One Dollar (\$1.00) for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe line, telephone line, and the opening of such roads as may be deemed reasonably necessary for and incident to the purpose of this Act.

#### **Royalty payable to General Land Office**

Sec. 10. If oil or other minerals are developed on any of the lands leased by the Board, the royalty as stipulated in the sale shall be paid

to the General Land Office at Austin, Texas, on or before the 20th day of each succeeding month for the preceding month during the life of the rights purchased, and be set aside in the State Treasury as specified in Section 1 hereof, and said funds may be used as therein provided. Said royalty paid to the General Land Office as above stipulated shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur and/or other minerals produced and saved since the last report and the amount of oil, gas, sulphur and/or other minerals produced and sold off the premises and the market value of the oil, gas, sulphur and/or other minerals together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks, vats, or pool and gas lines or gas storage. The books and accounts, receipts and discharges of all wells, tanks, vats, pools, meters, pipe lines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil, gas, sulphur and/or other minerals shall at all times be subject to inspection and examination of any member of the Board of Directors of the Agricultural and Mechanical College of Texas or any duly authorized representative of said Board. The Commissioner of the General Land Office shall tender to the Board of Directors of the Agricultural and Mechanical College of Texas at the close of each month a report of all receipts from the lease or sale of oil, gas, sulphur and/or other minerals turned into the special fund in the State Treasury.

#### Protection of contiguous or adjoining lands

Sec. 11. In every case where the area in which oil, gas, sulphur and/or other minerals sold shall be contiguous or adjacent to lands which are not lands belonging to and held by the Agricultural and Mechanical College of Texas, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from said adjacent lands to the extent that a reasonably prudent operator would do under the same and similar circumstances. In cases where the area in which the oil, gas, sulphur and/or other minerals are sold is contiguous to other lands belonging to and held by the Agricultural and Mechanical College of Texas which have been leased or sold at a lesser royalty, the owner shall likewise protect said land from drainage from the lands so leased or sold for a lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided for forfeitures.

#### Forfeitures

Sec. 12. If the owner of the rights acquired under this Act shall fail or refuse to make the payments of any sum due thereon, either as rental or royalty on the production, within thirty (30) days after the same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling or mining or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered

upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon oil, gas, sulphur and/or other minerals produced upon the leased area, and upon all rigs, tanks, vats, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and/or gas and/or sulphur and/or other minerals produced thereon, to secure any amount due from the owner of the said lease.

#### **Records filed in General Land Office**

Sec. 13. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalties, lease fees, rentals for delay in drilling or mining and all other payments, including all filing assignments and relinquishment fees hereunder, to be deposited in the special fund in the State Treasury to the credit of the Agricultural and Mechanical College of Texas as above provided.

#### **Adoption of forms and regulations**

Sec. 14. The Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease.

#### **Comptroller's warrants for expenses**

Sec. 15. The expenses of executing the provisions of this Act shall be paid by warrants drawn by the Comptroller of the State on the State Treasurer, and for that purpose the sum of Two Thousand Dollars (\$2000) or so much thereof as may be necessary is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated until September 1, 1937, after which time expenses of executing the provisions of this Act shall be paid by warrants drawn by the Comptroller of the State on the State Treasurer against the income from the special fund accumulated from leases, rentals, royalties, and other payments.

#### **Partial invalidity**

Sec. 16. If any section, subsection, paragraph, clause or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. Acts 1937, 45th Leg., p. 285, ch. 150.

Effective April 14, 1937.

Section 17 of this Act declared an emergency making the Act effective on and after its passage.

#### **Title of Act:**

An Act authorizing the Board of Directors of the Agricultural and Mechanical College of Texas to lease at public auc-

tion for oil, gas, sulphur, and/or other mineral development all lands used as experimental stations and all other lands under its exclusive control; providing for the "Agricultural and Mechanical College of Texas Special Mineral Fund" and the manner it is to be administered; providing for a permanent fund and the expenditure of



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

the income from same; prescribing the mode and manner of said oil, gas, sulphur and other mineral leases on said land; appropriating certain moneys received between the effective date of the Act and August 31, 1937, to the use of the Agricultural and Mechanical College of Texas, its branches and divisions, with special provision for that part of the money collected from leases of land embraced in Experimental Station No. 4, to be expended on said station, and the amount necessary for the use of the Piney Woods Livestock Experimental Station in Senatorial District No. 4; authorizing necessary subdivision, procuring of abstracts, and advertisement with respect to sale of said leases; providing penalty for delay in drilling; fixing certain regulations with regard to leasing;

providing drilling operations shall not interfere with the operations of the Agricultural and Mechanical College as an experimental station and/or farm; providing for the filing of leases and records in the State Land Office; providing for extension of leases; providing for assignment of leases and relinquishment to the State; providing the time and manner of payment of royalties; providing for reports to the Board of Directors; providing for forfeiture of lease; authorizing a majority of the Board to act; making an appropriation to defray the expenses of said Board; providing if any part of the Act shall be declared unconstitutional it shall not affect the validity of the remainder, and declaring an emergency. [Acts 1937, 45th Leg., p. 285, ch. 150.]

### CHAPTER 5.—COLLEGE OF INDUSTRIAL ARTS

2628a—9. Lease of lands of Texas College of Arts and Industries and of Texas Technological College

for oil, gas, sulphur or other mineral development; deposit and use of proceeds [New].

#### Art. 2628a—8. Dormitories

Dormitories, cottages and stadiums, self liquidating, see art. 2909a.

#### Art. 2628a—9. Lease of lands of Texas College of Arts and Industries and of Texas Technological College for oil, gas, sulphur or other mineral development; deposit and use of proceeds

Section 1. That the Board of Directors of the Texas Technological College at Lubbock and the Texas College of Arts and Industries at Kingsville are hereby authorized and empowered to lease for oil and/or gas and/or sulphur and/or other mineral development to the highest bidder at public auction all lands under the exclusive control of each Board or any part thereof now owned by the State of Texas and acquired for the use of the Texas Technological College and its divisions and the Texas College of Arts and Industries and its divisions or that may hereafter be acquired for the use of the Texas Technological College and its divisions and the Texas College of Arts and Industries and its divisions. Any amounts received under and by virtue of this Act shall be deposited in the State Treasury to the credit of special funds to be known as the "Texas Technological College Special Mineral Fund" and the "Texas College of Arts and Industries Special Mineral Fund," and be used exclusively for the Texas Technological College and its branches or divisions and the Texas College of Arts and Industries and its branches or divisions; provided, however, no money shall ever be expended from these funds except in the Regular Appropriation Bill and then for the purposes and in the amounts stated in said Bill.

#### Survey or subdivision of lands; maps and plats; abstracts of title and merchantable title

Sec. 2. Each Board is hereby authorized to cause said lands to be surveyed or subdivided into such tracts, lots, or blocks as will, in their judgment, be most conducive and convenient to facilitate the advantageous sale of lease for oil, gas, sulphur, and/or other minerals thereof and to make such maps and plats as may be thought necessary to carry

out the purposes of this Act. Each Board is further authorized to obtain authentic abstracts of title to all of said lands as they may deem necessary from time to time and to take such steps as may be necessary to perfect a merchantable title to said lands in the State of Texas.

**Placing of leases on lands; advertisement; sale at public auction; payments**

Sec. 3. Whenever, in the opinion of such Board, there shall be such a demand for the purchase of oil, gas, sulphur, or other mineral leases on any tract or part of any tract of land as will reasonably insure an advantageous sale, such Board shall place such oil, gas, sulphur, or other mineral leases on said land on the market in such tract or tracts, or any part thereof, as such Board may designate. It shall cause to be advertised a brief description of the land from which the oil, gas, sulphur, or other minerals is proposed to be leased. Such advertisement shall be made by inserting in two (2) or more papers of general circulation in this State and in addition such Board may, in its discretion, cause said advertisement to be placed in an Oil and Gas Journal published in and out of the State, and also mail copies of such proposals to the county judge of the county where said lands are located, and mail copies of such proposals to such other persons as such Board might think would be interested therein.

Such Board may sell the lease or leases to the highest bidder at public auction at the Texas Technological College at Lubbock, Texas, or at the Texas College of Arts and Industries at Kingsville, Texas, as the case may be, at any hour between 10:00 a.m. and 5:00 p.m. Such Board shall have the right to reject all bids. However, the highest bidder shall pay to such Board on the day of the sale twenty-five (25) per cent of the bonus bid and the balance of the bid shall be paid to such Board within twenty-four (24) hours after being notified that the bid has been accepted. Payments shall be paid in cash, certified check or cashier's check, as such Board may direct; provided, the failure to pay the balance of the amount bid will forfeit to such Board the twenty-five (25) per cent paid.

**Separate bid for each tract; minimum royalty; delay rental**

Sec. 4. A separate bid shall be made for each tract or subdivision thereof. No bids shall be accepted which offer a royalty of less than one-eighth of the gross production of oil, gas, sulphur, and other minerals in the land bid upon and this minimum royalty may be increased at the discretion of such Board. Every bid shall carry the obligation to pay an amount not less than One Dollar (\$1) per acre for delay in drilling or development; such amount to be fixed by such Board in advance of the advertisement and shall be paid every year for five (5) years unless in the meantime production in paying quantities is had upon the land or said land is released by the lessee.

**Subsequent procedure in event no bid at public auction accepted; restrictions and conditions**

Sec. 5. If, in the opinion of such Board, any one of the bidders shall have offered a reasonable and proper price for any tract, and not less than the price fixed by such Board, the lands advertised may be leased for oil, gas, sulphur, and/or other mineral purposes under the terms of this Act, and such regulations as such Board may prescribe, not inconsistent with the provisions of this Act. In the event no bid is accepted by such Board at public auction any subsequent procedure for the sale of oil and/or gas and/or sulphur and/or other mineral leases shall be in the manner above provided. Provided that no lease for oil, gas, sulphur,

and/or other minerals shall be made by said Board which will permit the drilling or mining for oil and/or gas and/or sulphur and/or other minerals within less than three hundred (300) feet of any building on said land, without the consent of such Board, and further providing that in making any lease or any experimental station and/or farm the lease shall provide that the operations for oil, gas, and other minerals shall not in any way interfere with the land as a Technological College or a College of Arts and Industries and shall not cause the abandonment of said property or its use for experimental farm purposes, and the lessee operating said property shall drill and carry on his operations in such a way as not to cause the abandonment of said property for Technological College purposes or for all purposes of a College of Arts and Industries and any such leased property shall be subject to the use by the State of Texas for all Technological College purposes or for all purposes of a College of Arts and Industries and said Board shall continue to operate said Technological college or said College of Arts and Industries, as the case may be.

**Acceptance and filing of satisfactory bid; discontinuance of yearly payments; termination of lease**

Sec. 6. If such Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur, and/or other mineral lands it shall accept the same and reject all other bids and file said accepted bid in the General Land Office. Whenever the royalties shall amount to as much as the yearly payments as fixed by such Board, the yearly payments may be discontinued. If before the expiration of five (5) years oil and/or gas and/or sulphur and/or other minerals shall not have been produced in paying quantities, the lease shall terminate, unless extended as hereinafter provided.

**Award to highest bidder; filing of lease; exploratory term; termination or extension; drilling and production under control of Railroad Commission**

Sec. 7. (a) If such Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur, and/or other minerals, it will make an award to the bidder offering the highest price therefor, and a lease shall be filed in the General Land Office.

(b) The exploratory term of the lease as determined by such Board prior to the promulgation of the advertisement shall in no case exceed five (5) years, and each lease shall provide that the lease will terminate at the expiration of its exploratory term unless by unanimous vote of members of such Board such lease may be extended for a period of three (3) years, which lease may be extended where such Board finds that there is likelihood of oil, gas, sulphur, and/or other minerals being discovered thereon by lessees, and that such lessees have proceeded with diligence to protect the interest of the State; provided, however, that if oil, gas, sulphur, and/or other minerals are being produced in paying quantities from the premises, said lease shall continue in force and effect as long as such oil, gas, sulphur, and/or other minerals are being so produced. Provided, that no extension hereunder may be made by such Board until the last thirty (30) days of the original term of the lease. The lease shall include such additional provisions and regulations as such Board may prescribe to preserve the interest of the State, but not inconsistent with the provisions of this Act.

(c) Whenever, in the discretion of said Board, it is deemed for the best interest of the State to extend a lease issued by said Board, such Board is hereby granted and given full authority by unanimous vote to

extend said lease for a period not to exceed three (3) years, upon the condition that the lessee shall continue to pay yearly rental as provided in the lease and such additional terms as such Board may see fit and proper to demand. Such Board is hereby given full authority to extend such lease and execute an extension agreement therefor.

(d) The drilling for and the production of oil, gas and other minerals from such lands shall be governed by and under the control of the Railroad Commission of Texas or such other regulatory bodies as may govern same just as in other fields in this State.

**Rentals in case of actual drilling in good faith; continuance of lease on discovery of minerals in paying quantities; duty to prevent drainage**

Sec. 8. If, during the term of any lease issued under the provisions of this Act, the lessee shall be engaged in actual drilling operations for the discovery of oil, gas, sulphur, and/or other minerals on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil, gas, sulphur, and/or other minerals are discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil, gas, sulphur, and/or other minerals are produced in paying quantities from such tract. In the event of the discovery of oil, gas, sulphur, and/or other minerals on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease to properly develop the same, to the extent that a reasonably prudent operator would do under the same and similar circumstances.

**Title to rights purchased; assignment; relinquishment**

Sec. 9. Title to all rights purchased may be held by the owners so long as the area produces oil, gas, sulphur, and/or other minerals in paying quantities. All rights purchased may be assigned. All assignments shall be filed in the General Land Office within one hundred (100) days from the date of the first acknowledgment thereof, accompanied by Ten (10) Cents per acre for each acre assigned and if not so filed and payment made, the assignment shall not be effective. All rights to any whole tract or to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed with the Chairman of such Board accompanied with One Dollar (\$1) for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. Such Board shall authorize the laying of pipe line, telephone line, and the opening of such roads as may be deemed reasonably necessary for and incident to the purpose of this Act.

**Payment of royalties; inspection and examination of books, accounts, etc.; report of receipts**

Sec. 10. If oil or other minerals are developed on any of the lands leased by such Board, the royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, on or before the 20th day of each succeeding month for the preceding month during the life of the rights purchased, and be set aside in the State Treasury as specified in Section 1 hereof, and said funds may be used as therein provided. Said royalty paid to the General Land Office as above stipulated shall be ac-

accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, and/or other minerals produced and saved since the last report and the amount of oil, gas, sulphur, and/or other minerals produced and sold off the premises and the market value of the oil, gas, sulphur, and/or other minerals together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks, vats, or pool and gas lines or gas storage. The books and accounts, receipts and discharges of all wells, tanks, vats, pools, meters, pipe lines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil, gas, sulphur, and/or other minerals shall at all times be subject to inspection and examination of any member of the Board of Directors of the Texas Technological College or any duly authorized representative of said Board or any member of the Board of Directors of the Texas College of Arts and Industries or any duly authorized representative of said Board, as the case may be. The Commissioner of the General Land Office shall tender to the Board of Directors of the Texas Technological College or to the Board of Directors of the Texas College of Arts and Industries, as the case may be, at the close of each month a report of all receipts from the lease or sale of oil, gas, sulphur, and/or other minerals turned into the special fund in the State Treasury.

**Protection of land leased from drainage; forfeiture of rights**

Sec. 11. In every case where the area in which oil, gas, sulphur, and/or other minerals sold shall be contiguous or adjacent to lands which are not lands belonging to and held by the Texas Technological College or the Texas College of Arts and Industries, as the case may be, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from said adjacent lands to the extent that a reasonably prudent operator would do under the same and similar circumstances. In cases where the area in which the oil, gas, sulphur, and/or other minerals are sold is contiguous to other lands belonging to and held by the Texas Technological College or the Texas College of Arts and Industries, as the case may be, which have been leased or sold at a lesser royalty, the owner shall likewise protect said land from drainage from the lands so leased or sold for a lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by such Board in the manner elsewhere provided for forfeitures.

**Forfeiture of lease; grounds; suit for forfeiture, damages or specific performance; lien of state**

Sec. 12. If the owner of the rights acquired under this Act shall fail or refuse to make the payments of any sum due thereon, either as rental or royalty on the production, within thirty (30) days after the same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling or mining or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority access to the records and other data pertaining to the operations under this Act, or if such owner or his authorized agent should fail or refuse to give correct information to the

proper authorities, or fail or refuse to furnish the log of any well within thirty (30) days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by such Board by an order entered upon the minutes of such Board reciting the facts constituting the default, and declaring the forfeiture. Such Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty (30) days after the declaration of forfeiture, the lease may, at the discretion of such Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon oil, gas, sulphur, and/or other minerals produced upon the leased area, and upon all rigs, tanks, vats, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and/or gas and/or sulphur and/or other minerals produced thereon, to secure any amount due from the owner of the said lease.

**Filing of surveys, records, etc. in General Land Office; payment of royalties, rentals, etc.**

Sec. 13. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalties, lease fees, rentals for delay in drilling or mining and all other payments, including all filing assignments and relinquishment fees hereunder, to be deposited in the special fund in the State Treasury to the credit of the Texas Technological College or the Texas College of Arts and Industries, as the case may be, as above provided.

**Forms, regulations, rules and contracts; majority of board to act; rejection of bids; withdrawal of lands**

Sec. 14. Such Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of such Board shall have power to act in all cases, except where otherwise herein provided. Such Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease.

**Partial invalidity**

Sec. 15. If any section, subsection, paragraph, clause, or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. Acts 1939, 46th Leg., p. 265.

Effective 90 days after June 21, 1939, date of adjournment.

Section 16 of Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the Board of Directors of the Texas Technological College at Lubbock and the Texas College of Arts and Industries at Kingsville to lease at public auction for oil, gas, sulphur, and/or other

mineral development all lands used as experimental stations and all other lands under its exclusive control; providing for the Texas Technological College Special Mineral Fund and the Texas College of Arts and Industries Special Mineral Fund and the manner it is to be administered; providing for a permanent fund and the expenditure of the income from same; prescribing the mode and manner of said oil, gas, sulphur, and other mineral leases on said land; allocating money collected under this Act to the use of the Texas Tech-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

nological College and the Texas College of Arts and Industries, their branches and divisions; providing no money to be expended except by authority of the General Appropriation Bill; authorizing necessary subdivision, procuring of abstracts, and advertisement with respect to sale of said leases; enacting provisions with reference to bidding on leases; providing no bids shall be accepted which offer less than one-eighth royalty; providing penalty for delay in drilling; fixing certain regulations with regard to leasing; providing drilling operations shall not interfere with the operation of the Texas Technological College and the Texas College of Arts and Industries as colleges and/or farms; providing for assignment of purchased rights; providing that title may be

held by owners so long as area produces oil, gas, sulphur, and/or other minerals in paying quantities; providing for the filing of leases and records in the State Land Office; providing for extension of leases; providing for assignment of leases and relinquishment to the State; providing the time and manner of payment of royalties; providing for reports to the Board of Directors of each college; making certain provisions with reference to drainage from adjacent lands; providing for forfeiture of lease; authorizing a majority of each Board to act; providing if any part of the Act shall be declared unconstitutional it shall not affect the validity of the remainder; and declaring an emergency. Acts 1939, 46th Leg., p. 265.

## CHAPTER SIX—TEXAS TECHNOLOGICAL COLLEGE

Art.

2632b. Lease of campus land for National Guard Armory, etc. [New].

### Art. 2630. Board of Directors

Board of Trustees of "Cotton Research Award Fund," president as member of, see article 165—4.

Lease of lands of Texas Technological College for oil, gas, sulphur or other mineral development, see article 2628a—9.

### [Art. 2632a. Dormitories]

Dormitories, cottages and stadiums, self liquidating, see art. 2909a.

### Art. 2632b. Lease of campus land for National Guard Armory, etc.

Section 1. The Board of Directors of Texas Technological College at Lubbock, Texas, is hereby authorized to select a tract of land upon the campus of the Texas Technological College at Lubbock, Texas, and to lease such tract of land so selected to the Texas National Guard Armory Board, for the purpose of erecting thereon, with money borrowed under the pledges authorized in the next Act mentioned, and with any assistance by the Federal Government or otherwise, an armory and other buildings suitable for use by the Texas National Guard under the provisions of Senate Bill No. 326, enacted by the Regular Session of the Forty-sixth Legislature of Texas, approved on May 1, 1939;<sup>1</sup> that the Board of Directors of Texas Technological College is hereby authorized to make and enter into a contract with the Texas National Guard Armory Board, providing for such lease on such terms as may be suitable and satisfactory to the Board of Directors of Texas Technological College, for a term not longer than ninety-nine (99) years.

Sec. 2. That the Board of Directors of Texas Technological College is hereby authorized to select and set aside a tract of land on the campus of Texas Technological College at Lubbock, Texas, not in excess of ten (10) acres, such tract of land so selected and set aside to be used by the Texas National Guard as a drill ground.

Sec. 3. The Board of Directors of Texas Technological College is hereby authorized to permit the Texas National Guard Armory Board and the Texas National Guard and any subdivision thereof, ingress upon

the campus of the Texas Technological College, and egress therefrom; for the purpose of going to and from the Armory and other buildings and the drill ground, authorized by Sections 1 and 2 of this Act. Acts 1939, 46th Leg., p. 272.

1 Article 5890b.

Effective July 7, 1939.

Section 4 of the Act of 1939 reads as follows: "Should any section of any provision or any part of this Act be held invalid, it is hereby declared to be the legislative intent that the remaining sections, provisions and portions shall not be affected thereby, but will remain effective after omitting such invalid provisions or parts."

Section 5 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing the Board of Directors of Texas Technological College at Lubbock, Texas, to select and lease a tract of land upon the campus of said college to the Texas National Guard Armory Board for purpose of erecting thereon, with money borrowed under the pledges author-

ized in the next Act mentioned, and with any assistance by the Federal Government or otherwise, an armory and other buildings to be used by Texas National Guard under provisions of Senate Bill No. 326, enacted by Regular Session of the Forty-sixth Legislature, approved May 1, 1939; providing terms of such lease contract; authorizing Board of Directors of said college to select and set aside tract of land on said campus not in excess of ten (10) acres suitable for Texas National Guard as drill ground; authorizing said Board of Directors of said college to permit Texas National Guard, and any subdivision thereof, ingress upon said campus and egress therefrom for purpose of going to and from such armory, other buildings and drill ground; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., p. 272.

## CHAPTER NINE—STATE TEACHERS' COLLEGES

### 1. GENERAL PROVISIONS

#### Art. 2647a. Dormitories and lands for teachers colleges

Dormitories, cottages and stadiums, self liquidating, see art. 2909a.

### 4. SOUTHWEST TEXAS STATE TEACHERS' COLLEGE

#### Art. 2654. [2708-11] School established

Borrowing from Federal Agencies, see art. 2603c.

## CHAPTER 9A—TUITION AND CONTROL OF FUNDS OF STATE INSTITUTIONS

#### Art. 2654c. Tuition rates in State institutions of collegiate rank

4a. From each student registering for courses in the Departments of Arts, Drama or Speech, and Music, an amount shall be collected as special tuition, in addition to that now provided for by law, for courses in such Departments designated by the Governing Board of said institutions; but in no event shall this special tuition be more than Seventy-five (\$75.00) Dollars per course for each semester or summer session. Acts 1933, 43rd Leg., p. 596, ch. 196, § 4a, as added Acts 1939, 46th Leg., p. 273, § 1.

Effective May 3, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.



## CHAPTER TEN—STATE DEPARTMENT OF EDUCATION

### 1. STATE SUPERINTENDENT

#### Art. 2663b—1. Teaching Constitution in school

Sec. 4. No person hereafter shall be certified to teach in the public schools of the State of Texas until he has secured credit for the course in both Federal and State Constitutions of the grade of instruction upon which he is applying for the certificate, that is either of the subcollege or of the college work; or in lieu thereof shall have passed an examination set by the State Superintendent of Public Instruction on the Constitutions of the United States and Texas; provided, that any person who has to his credit in any standard college or university of Texas as much as six (6) hours of American Government shall be deemed to have met the requirements of this Section. Provided further, that after September 1, 1937, no student shall be certified for graduation from any tax supported State educational institution with the award of a college degree unless such student shall have completed theretofore in a standard college or university at least six (6) hours for credit in the governments of the State of Texas or of the United States of America, or the equivalent in both; or shall have completed at least three (3) hours of said credit in Government and at least three (3) hours of credit in a course in Military Science as provided in an approved senior R. O. T. C. unit. As amended Acts 1937, 45th Leg., p. 482, ch. 244, § 1; Acts 1939, 46th Leg., p. 284, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

House Concurrent Resolution No. 124 of the 45th Legislature 1937, Laws 1937, p.

1629, provided, omitting the preamble, that the proviso as set out in this article as amended in 1937, "be so construed and applied to affect only those students who enroll in such institutions after September 1, 1937, and shall not apply to students who enrolled in the tax-supported colleges or universities before said date."

### 2. STATE BOARD

#### Art. 2665. [2729] Shall make apportionment

The State Board of Education shall, on or before the first day of August in each year, based on the estimate theretofore furnished said Board by the Comptroller, make an apportionment for the ensuing scholastic year of the available State School Funds among the several counties of the State and the several cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, and thereupon the secretary shall certify to the treasurer of each such separate school organization the total amount of available school fund so apportioned to each, which certificate shall be signed by the president and countersigned by the Comptroller and attested by the secretary.

In arriving at the amount to be apportioned, the State Board of Education shall determine the cost of operating schools for a six (6) months period, taking into consideration the estimate of current costs, including the cost of general control, instruction, operation, maintenance, fixed charges, auxiliary agencies, and interest on short term loans; all items to be calculated on a minimum program of education set up by the State

Board. When such apportionment per pupil has been fixed, same shall be certified by the secretary of the Board and filed with the Automatic Tax Board to be used by the Tax Board in fixing the rate of State ad valorem taxes for school purposes that will provide sufficient funds to maintain the public schools of Texas for a period of not less than six (6) months. Provided that the State Board of Education in estimating the amount of money that it judges to be necessary to maintain the public schools for a period of not less than six (6) months shall proceed as follows, and make use of the formulas set up as follows: (1) It shall multiply the minimum base salary per month used in accredited schools by the total number of teachers, principals, supervisors, assistant superintendents, and superintendents in the State, and then multiply this product by six (6); (2) From its statistical data collected yearly showing total expenditures for school purposes by all the public schools of the State, it shall make an average of such expenditures for the last five (5) years preceding the year for which the per capita is to be set, taking into account all expenditures for general control less salaries paid to superintendents and assistant superintendents, for instructional purposes less salaries paid to supervisors, principals, and teachers of all ranks, for the operation of the school plants, for the maintenance of the school plants, for fixed charges, for interest on short term loans to pay current running expenses in anticipation of the collection of taxes or the receipt of the State per capita or other moneys, and for auxiliary agencies, but specifically excluding all amounts spent for bonds or the servicing of bonds or bonded indebtedness in any way and specifically excluding also all amounts spent as capital outlay for grounds, buildings, and equipment; (3) It shall take two-thirds ( $\frac{2}{3}$ ) of the total average so found as directed in two (2) above and add to it the last product as found in one (1) above, and this last sum so found shall be considered the amount that is deemed necessary to maintain the public schools for a period of not less than six (6) months. Provided that the State per capita apportionment shall never exceed Twenty-two Dollars and Fifty Cents (\$22.50) for any one scholastic year. As amended Acts 1939, 46th Leg., p. 274, § 1.

Effective June 2, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

#### Art. 2671. 2738 Conditions of purchase

The Comptroller of State Board shall carefully examine the bonds, obligations, or pledges so offered and investigate the facts tending to show the validity thereof; and such Board may decline to purchase same unless satisfied that they are a safe and proper investment for such fund. No bonds, obligations, or pledges shall be so purchased that bear less than two and one-half ( $2\frac{1}{2}\%$ ) per cent interest. No bonds, obligations, or pledges except those of the United States, the State of Texas, and the University of Texas, shall be so purchased when the indebtedness of the county, city, precinct, or district issuing same, inclusive of those so offered, shall exceed seven (7%) per cent of the assessed value of the real estate therein. If default be made in the payment of interest due upon such bonds, obligations, or pledges, the State Board of Education may at any time prior to the payment of such overdue interest elect to treat the principal as also due, and the same shall thereupon, at the option of said Board become due and payable; and the payment of both such principal and interest shall in all such cases be enforced in the manner provided by law, and the right to enforce such collection shall

never be barred by any law or limitation whatever. As amended Acts 1939, 46th Leg., p. 276.

Effective June 30, 1939.

Section 2 of amendatory Act of 1939 the Act should take effect from and after declared an emergency and provided that its passage.

#### [4. PHYSICAL RESTORATION OF CRIPPLED CHILDREN]

[Art. 2675j. Rehabilitation Division of State Department of Education created]

[Powers of Rehabilitation Division; compensation for treatment; artificial appliances; rules and regulations]

Sec. 3. The Rehabilitation Division of the State Department of Education is empowered to take census, make surveys, and establish permanent records of crippled children; to cooperate with the Department of Education in providing special equipment and instruction in the education of crippled children, to procure medical and surgical service for crippled children; provided that only physicians legally qualified to practice medicine and surgery in Texas be employed for purposes of diagnosis and treatment; provided further, however, that for crippled children having defects of the oral cavity, legally qualified dentists may be employed for purposes of diagnosis and treatment; that not more than the customary minimum fees be paid for such services, and that physicians, dentists, or surgeons so employed shall be approved by the State Board of Health as qualified to render such service; to select and designate hospitals for the care of crippled children contemplated by this Act providing that such hospital must be approved by the State Board of Control, and to take such other steps as may be necessary in order to accomplish the purposes of this Act.

At the discretion of the State Department of Education, transportation, appliances, braces, and material necessary in the proper handling of crippled children may be in part or entirely provided.

The Rehabilitation Division of the State Department of Education is directed to provide in Rules and Regulations, the necessary details for the conduct of this work, in accordance with the purposes of this Act, which shall permit as far as possible, the free choice of patients in their selection of physicians and hospitals, and shall arrange with hospitals, brace departments, and other services providing for crippled children's work, compensation for such services, provided that such fees or charges shall not exceed the average minimum charges for the same services rendered to average ward patients in the hospitals approved for purpose of this Act, such Rules and Regulations shall be approved by the State Department of Education. [As amended Acts 1937, 45th Leg., p. 411, ch. 207, § 1.]

Amendment of 1937, effective April 26, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

## CHAPTER ELEVEN—COUNTY SCHOOLS.

- | Art.      | 1. TRUSTEES  | Art.      | 2700d—24.   |
|-----------|--|-----------|---|
| 2685b.    | Counties of 5,100 to 5,200; expenses of administering scholastic affairs [New].                                    | 2700d—24. | Traveling and other expenses of superintendent and trustees in counties of 19,890 to 19,905 population [New].   |
| 2687-b.   | Meetings in counties of 130,000 to 133,000 population [New]  | 2700d—25. | Superintendent's salary in counties of 18,760 to 18,960 population [New].   |
|           | 2. SUPERINTENDENT  | 2700d—26. | Superintendent's salary in counties of 29,750 to 30,025 population; reports [New].  |
| 2700d—7.  | County superintendent's office and traveling expenses in counties of enumerated population [New].                  | 2700d—27. | Superintendent's salaries in counties having population of 22,100 to 22,500; 41,050 to 42,100; 22,600 to 22,800; 14,550 to 14,800; 11,021 to 11,050; reports [New]. |
| 2700d—8.  | Office and traveling expenses of Superintendent and assistants; counties with 14,540—14,580 population [New].      | 2700d—28. | Salary and expenses of superintendents in counties of 197,000 to 198,000 and 32,400 to 32,800 population; proration of allowance; reports [New].                    |
| 2700d—9.  | County superintendent's office and traveling expenses in counties of 13,125 to 13,145 [New].                       | 2700d—29. | Traveling expenses of superintendents in counties of 22,500 to 22,600 population [New].   |
| 2700d—10. | Office and traveling expenses in counties 30,708 to 30,750 [New].  | 2700d—30. | Superintendent's salary in counties of 14,535 to 14,555 population [New].   |
| 2700d—11. | Office and traveling expenses in counties of 49,000 to 49,025 [New].   | 2700d—31. | Traveling and office expenses of superintendents in counties of 13,400 to 13,500 and 5,180 to 5,190 population [New].   |
| 2700d—12. | Office and traveling expenses in counties of 29,400 to 29,450 and other counties [New].                            | 2700d—32. | Salary of superintendent in counties of 23,880 to 23,890 and 6,000 to 6,010 population [New].   |
| 2700d—13. | Office and traveling expenses in counties of 32,400 to 32,500 [New].   | 2700d—33. | Salary of superintendent in counties of 43,125 to 43,200 population [New].  |
| 2700d—14. | Office and traveling expenses in counties of 27,441 to 27,450 and other counties [New].                            | 2700d—34. | Salary in counties of 20,790 to 20,825 [New].   |
| 2700d—15. | Office and traveling expenses in counties of 10,050 to 10,075 and certain other counties [New].                    | 2700d—35. | Salary and office and traveling expenses in counties of 10,360 to 10,380 and counties of 10,399—10,499 [New].   |
| 2700d—16. | Office and traveling expenses of county superintendents and assistants in counties of enumerated population [New]. | 2700d—36. | Office and traveling expenses in counties of 24,578 to 24,580 and counties of 64,400 to 64,500 [New].   |
| 2700d—17. | Salary and expenses of superintendents in counties of enumerated population [New].                                 | 2700d—37. | County superintendent—Salary and expenses—Compensation of school trustees—Counties of 13,450 to 13,600 and 19,950 to 20,100 population [New].                       |
| 2700d—18. | Salary and expenses of Superintendents in counties of enumerated population [New]                                  | 2700d—38. | Salaries in counties of 34,600 to 34,700 and counties of 13,800 to 13,900 [New].  |
| 2700d—19. | County superintendent—expenses—counties of population [New]  | 2700d—39. | Salaries in counties of 77,000 to 77,600; 51,770 to 51,800; 12,190 to 12,200; 13,400 to 13,500; 27,500 to 27,600 [New].   |
| 3700d—20. | Superintendent's salary in counties of 15,760 to 15,790 [New].   |           |   |
| 2700d—21. | Traveling expenses of superintendents in counties of 15,725 to 15,775 population [New].                            |           |   |
| 2700d—22. | Salary and expenses of superintendents in counties of enumerated population [New].                                 |           |   |
| 2700d—23. | Expenses of superintendent and trustees in administration of scholastic affairs in certain counties [New].         |           |   |

Art.

2700d—40. County superintendent—Salaries—Counties of 23,620 to 23,800 and 12,460 to 12,780 population [New].

**3. RURAL SCHOOL SUPERVISOR**

Art.

2701e—1. Rural school music supervisor in counties of 16,670 to 17,060 and 9,300 to 9,405 population [New].

**1. TRUSTEES****[Art. 2683a. Appropriation and use of donations]**

Teachers retirement system, see art. 2922—1 of this title.

**Art. 2685b. Counties of 5,100 to 5,200; expenses of administering scholastic affairs**

That in each county of this State with a population of not less than five thousand one hundred (5,100) nor more than five thousand two hundred (5,200) as shown by the Federal Census of 1930, the county board of trustees is hereby authorized to set aside from the Available School Fund of the county, in accordance with the provisions of the General Law governing the assessment for the support of the county superintendent's office, an amount not to exceed Six Hundred (\$600.00) Dollars per year to defray the expenses of the County Judge serving as ex-officio County Superintendent within the county. Acts 1939, 46th Leg., Spec.L., p. 627, § 1.

Effective July 8, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the county board of trustees in counties having a population of not less than five thousand one hundred

(5,100) nor more than five thousand two hundred (5,200) as shown by the Federal Census of 1930, to set aside a certain amount of the Available School Fund apportioned to such counties to defray certain expenses in the administration of the scholastic affairs of such counties; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 627.

**Art. 2687. Meetings**

The County School Trustees shall hold meetings once each quarter, on the first Monday in August, February, May, and November, or as soon thereafter as practicable, and at other times when called by the President of the County School Trustees or at the instance of any two (2) members of the County School Trustees and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent. Each Trustee shall be paid Three Dollars (\$3) per day, but not to exceed Thirty-six Dollars (\$36) in any one year, for the time spent in attending such meetings, out of the State and County Available School Fund by warrants drawn on order of the County Superintendent and signed by the President of the County School Trustees, after approval of the account, properly sworn to by the President of the County School Trustees. As amended Acts 1937, 45th Leg., p. 644, ch. 315, § 1.

In all counties in Texas having a population of not less than forty-three thousand, one hundred and eighty (43,180) and not more than forty-four thousand, one hundred (44,100) population according to the last preceding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practical, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three members of said Board, and the County Superintendent, the meeting place to be at the county seat and in the office of the County

Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each county school trustee shall be paid Five Dollars (\$5) per day for the time spent in attending such meetings not to exceed twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. Added Acts 1937, 45th Leg., p. 204, ch. 108, § 1.

(a) In all counties in Texas having a population of not less than forty-eight thousand, five hundred and sixty (48,560) and not more than forty-eight thousand, six hundred and sixty-five (48,665), according to the last preceding Federal Census;

(b) in counties containing a population of not less than thirty thousand, and twenty (30,020) and not more than thirty thousand, one hundred and twenty-five (30,125), according to the last preceding Federal Census;

(c) in counties containing a population of not less than ten thousand, three hundred and seventy (10,370) and not more than ten thousand, four hundred and seventy-five (10,475), according to the last preceding Federal Census;

(d) in counties having a population of not less than fourteen thousand, five hundred and eighty (14,580) and not over fourteen thousand, five hundred and ninety (14,590), according to the last preceding United States Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent; the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Five Dollars (\$5) per day for the time spent in attending such meetings not to exceed twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. Added Acts 1937, 45th Leg., p. 795, ch. 389, § 1.

(e) In all counties in Texas having a population of not less than thirty-seven thousand, five hundred (37,500), and not more than thirty-eight thousand, six hundred (38,600), according to the last preceding Federal Census and each succeeding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practical, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board, and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each county school trustee shall be paid Seven Dollars (\$7) per day for the time spent in attending such meetings, but not to exceed One Hundred and Twelve Dollars (\$112) in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. Added Acts 1939, 46th Leg., Spec.L., p. 691, § 1.

In all counties in Texas having a population of not less than thirty thousand, two hundred and eighty-five (30,285) and not more than thirty

thousand, two hundred and ninety-one (30,291), according to the last preceding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the county courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Four Dollars (\$4) per day for the time spent in attending such meetings not to exceed twenty-five (25) days in any one year. Such compensation shall be paid out of the State and County Available School Fund as the law now provides. Added Acts 1939, 46th Leg., Spec.L., p. 688, § 1.

In all counties in Texas having a population of not less than fifty-three thousand, nine hundred and thirty (53,930) and not more than fifty-three thousand, nine hundred and forty (53,940), according to the last preceding Federal Census, the County School Trustees shall hold meetings twice each month on the first and third Mondays in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent; their general meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the Courthouse as may be designated by the President of the Board of County School Trustees. A minimum of twelve (12) meeting days of the Board of County School Trustees each year shall be devoted to visiting and inspecting the schools of the county, in both common and independent districts, and in company with the County Superintendent. Each County School Trustee shall be paid Five Dollars (\$5) per day for the time spent in attending such meetings not to exceed twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. Added Acts 1939, 46th Leg., Spec.L., p. 694, § 1.

Amendments of 1937, ch. 108, effective April 6, 1937; chapters 315 and 389, effective 90 days after May 22, 1937, date of adjournment.

Acts 1939, Spec.L., p. 688, effective April 7, 1939; Spec.L., p. 691, effective May 3, 1939; Spec.L., p. 694, effective May 17, 1939.

Section 2 of Acts 1937, p. 644, ch. 315, read as follows: "The provisions of this Act shall be cumulative of all existing laws on the subject, and shall, in nowise, repeal any special or local laws on the subject of this Act."

Section 2 of Acts 1937, 45th Leg., p. 204, ch. 108, and section 2 of Acts 1937, 45th

Leg., p. 795, ch. 389, and section 2 of Acts 1937, p. 644, ch. 315, and section 2 of Act 1939, Spec.L., pp. 688, 691, and 694, provided that the provisions of this Act shall be cumulative of all same laws on the subject of this Act not in conflict herewith and wherein otherwise provided herein, such General Laws shall apply; but in case of conflict the provisions of this Act shall control thereby and be effective.

Section 3 of the amendatory acts of 1937 and section 3 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2687—b. Meetings in counties of 130,000 to 133,000 population

In all counties in Texas having a population of not less than one hundred and thirty thousand (130,000) and not more than one hundred and thirty-three thousand (133,000), according to the last preceding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday of each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees or at the instance of any three (3) mem-

bers of said Board and the County Superintendent; the meeting place to be at the County Courthouse and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Six Dollars (\$6) per day for the time spent in attending said meetings, not exceeding twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of said county by warrants drawn against such fund as the law now provides, after the approval of this Act. [Acts 1937, 45th Leg., 1st C.S., p. 1820, ch. 40, § 1.]

Effective July 15, 1937.

Section 2 provided that:

"The provisions of this Act shall be cumulative of all laws on the subject of this Act not in conflict herewith, and where not otherwise provided herein, such

laws shall apply; but in case of conflict, the provisions of this Act shall control and be effective."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## 2. SUPERINTENDENT

### Art. 2691a. Rural school supervisors

Section 1. That the County Board of School Trustees in counties having a population of twenty-nine thousand, three hundred (29,300) to twenty-nine thousand, five hundred (29,500) and forty-six thousand, one hundred (46,100) to forty-six thousand, two hundred (46,200), according to the last available Federal Census, may employ a rural school supervisor to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county, and shall meet with and advise with the County Board at all regular meetings.

Sec. 2. It shall be the duty of such Supervisor to visit the schools of the county and help the teachers with their classwork by teaching demonstration lessons for them, suggesting methods of presenting the work, and aiding them in any other ways possible.

Sec. 3. The Supervisor may call the meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the supervisor whenever possible.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed One Thousand, Five Hundred Dollars (\$1,500). Said salary shall be paid out of the available funds of the districts in proportion to the weekly salary or salaries of the teachers of the district.

Sec. 5. The employment of a rural school supervisor under the terms of this Act shall exempt the County Superintendent from holding a teachers' institute for rural teachers; and in all counties having a population of twenty-nine thousand, three hundred (29,300) to twenty-nine thousand, five hundred (29,500), according to the last available Federal Census, shall exempt the County Superintendent from holding a teachers' institute for teachers of independent districts with a scholastic population of less than five hundred (500); and shall exempt the teachers of such schools of the county from attendance upon a teachers' institute, as provided for in Article 2691, Revised Civil Statutes of Texas of 1925, and as amended by the Fortieth Legislature. As amended Acts 1939, 46th Leg., Spec.L., p. 710, § 1.

Effective April 14, 1939.

Section 2 of the amendatory act of 1939 provided that the unconstitutionality or in-

validity of any section or part of the Act should not affect the remainder of the Act, nor prevent its immediate operation as a



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

law of this State. Section 3 repealed all the act should take effect from and after conflicting laws and parts of laws. Section its passage.  
4 declared an emergency and provided that

#### Art. 2691b. Rural school supervisors in Van Zandt and other counties

Sec. 1. The County Boards of School Trustees may employ rural supervisors of Van Zandt, Panola, Nacogdoches, Jasper, Cass, Live Oak, Anderson, Scurry, Wood, Denton, Shelby, Morris, Parker, Nolan, Titus, Wise and Lamar Counties, to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the counties. As amended, Acts 1939, 46th Leg., Spec.L., p. 713, § 1.

Effective Feb. 15, 1939.

Section 2 of the amendatory Act of that the Act should take effect from and 1939 declared an emergency and provided after its passage.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees, providing that the total salaries paid such school supervisor for any one year shall not exceed Two Thousand (\$2,000.00) Dollars; said salary shall be included in the annual budget for County Administration Expense, and an assessment shall be levied upon the scholastic population of Van Zandt County for the purpose of paying the salary of the supervisor, provided the County Board of School Trustees of the various counties named in House Bill No. 72, Chapter 39, of the General and Special Laws of the Forty-second Legislature, First Called Session, 1931, shall have the power to discontinue the office of rural school supervisors at any time when it is clearly shown that such rural school supervisors are not a public necessity, and their services are not commensurate with the salaries received. As amended Acts 1939, 46th Leg., Spec.L., p. 714, § 1; Acts 1939, 46th Leg., Spec.L., p. 715, § 1.

Effective March 28 and May 15, 1939.

Section 2 of the amendatory acts of that the act should take effect from and 1939 declared an emergency and provided after its passage.

#### Art. 2700d—7. County superintendent's office and travelling expenses in counties of enumerated population

Section 1. In counties having a population of not less than twenty-four thousand and sixty (24,060) and not more than twenty-four thousand and seventy-five (24,075), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-a. In counties having a population of not less than thirty thousand, two hundred eighty-eight (30,288), nor more than thirty thousand, two hundred ninety-two (30,292), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-b. In counties having a population of not less than twelve thousand, four hundred sixty-nine (12,469), nor more than twelve thousand, four hundred seventy-three (12,473), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-c. In counties having a population of not less than twenty-seven thousand, eight hundred (27,800), nor more than twenty-seven thousand, eight hundred four (27,804), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-d. In counties having a population of not less than eleven thousand, nine hundred ninety-six (11,996), nor more than twelve thousand (12,000), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-e. In counties having a population of not less than twelve thousand, five hundred twenty-two (12,522), nor more than twelve thousand, five hundred twenty-six (12,526), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-f. In counties having a population of not less than seventeen thousand, sixty-two (17,062), nor more than seventeen thousand, sixty-six (17,066), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-g. In counties having a population of not less than eleven thousand, four hundred forty-six (11,446), nor more than eleven thousand, four hundred fifty (11,450), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem

necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-h. In counties having a population of not less than fourteen thousand, five hundred eighty-six (14,586), nor more than fourteen thousand, five hundred ninety (14,590), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-i. In counties having a population of not less than twenty-two thousand, six hundred forty (22,640), nor more than twenty-two thousand, six hundred forty-four (22,644), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-j. In counties having a population of not less than thirteen thousand, nine hundred thirty-four (13,934), nor more than thirteen thousand, nine hundred thirty-eight (13,938) according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-k. In counties having a population of not less than twenty-eight thousand, six hundred twenty-five (28,625), nor more than twenty-eight thousand, six hundred thirty (28,630), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-l. In counties having a population of not less than fifteen thousand, one hundred forty-seven (15,147), nor more than fifteen thousand, one hundred fifty-two (15,152), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided

that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 2. The provisions of this Act shall be cumulative of all General Laws on the subject and where not otherwise provided herein, such General Laws shall apply; but, in case of conflict, the provisions of this Act shall control and be effective. Acts 1937, 45th Leg., p. 35, ch. 27.

Effective March 5, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the amount that may be allowed by County Boards of Trustees to the County Superintendents of Public Instruction for expenditures for office

and traveling expenses in certain counties according to the last preceding Federal Census; making this Act cumulative of all General Laws on the same subject, such General Laws to apply except in case of conflict when the provisions of this Act shall control, and declaring an emergency. Acts 1937, 45th Leg., p. 35, ch. 27.

**Art. 2700d—8. Office and traveling expenses of Superintendent and assistants; counties with 14,540–14,580 population**

Section 1. In counties having a population of not less than fourteen thousand, five hundred and forty (14,540) and not more than fourteen thousand, five hundred and eighty (14,580), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

**Counties with 48,563–48,663 population**

Sec. 1a. In counties having a population of not less than forty-eight thousand, five hundred sixty-three (48,563) and not more than forty-eight thousand, six hundred sixty-three (48,663), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of County Superintendent.

**Counties with 10,371–10,471 population**

Sec. 1b. In counties having a population of not less than ten thousand, three hundred seventy-one (10,371) and not more than ten thousand, four hundred seventy-one (10,471), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of County Superintendent.

**Counties with 30,030—30,130 population**

Sec. 1c. In counties having a population of not less than thirty thousand, thirty (30,030) and not more than thirty thousand, one hundred thirty (30,130), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of County Superintendent.

**Counties with 10,028—10,128 population**

Sec. 1d. In counties having a population of not less than ten thousand, twenty-eight (10,028) and not more than ten thousand, one hundred twenty-eight (10,128), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

**Counties with 16,003—16,010 population**

Sec. 1e. In counties having a population of not less than sixteen thousand, three (16,003) and not more than sixteen thousand, ten (16,010), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. Acts 1937, 45th Leg., p. 111, ch. 64.

Effective March 23, 1937.

Section 2 repeals all conflicting laws and parts of laws; section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the amount that may be allowed by County Boards of Trus-

tees to the County Superintendents of Public Instruction and their assistants for expenditures for office and traveling expenses in certain counties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict therewith, and declaring an emergency. Acts 1937, 45th Leg., p. 111, ch. 64.

**Art. 2700d—9. County superintendent's office and traveling expenses in counties of 13,125 to 13,145.**

In counties having a population of not less than thirteen thousand, one hundred and twenty-five (13,125) and not more than thirteen thousand, one hundred and forty-five (13,145), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws govern-

ing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 142, ch. 75, § 1.]

Effective March 25, 1937.

Section 2 repeals all conflicting laws and parts of laws; section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the amount that may be allowed by County Boards of Trus-

tees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in certain counties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 142, ch. 75.]

#### Art. 2700d—10. Office and traveling expenses in counties 30,708 to 30,750

In counties having a population of not less than thirty thousand, seven hundred and eight (30,708) and not more than thirty thousand, seven hundred and fifty (30,750), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Five Hundred Dollars (\$500) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. Acts 1937, 45th Leg., p. 156, ch. 82, § 1.

Effective March 31, 1937.

Section 2 repeals all conflicting laws and parts of laws. Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the amount that may be allowed by County Boards of Trus-

tees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in certain counties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict therewith, and declaring an emergency. Acts 1937, 45th Leg., p. 156, ch. 82.

#### Art. 2700d—11. Office and traveling expenses in counties of 49,000 to 49,025

In all counties containing a population of not less than forty-nine thousand (49,000), nor more than forty-nine thousand and twenty-five (49,025), according to the last preceding Federal Census, the County Superintendents shall receive from the available school funds of their respective counties, for office and traveling expenses, a sum not to exceed Six Hundred Dollars (\$600) per annum. Acts 1937, 45th Leg., p. 243, ch. 127, § 1.

Effective April 9, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act increasing the allowance for office and traveling expenses for County

Superintendents in all counties containing a population, according to the last preceding Federal Census, of not less than forty-nine thousand (49,000), nor more than forty-nine thousand and twenty-five (49,025), and declaring an emergency. [Acts 1937, 45th Leg., p. 243, ch. 127.]

#### Art. 2700d—12. Office and traveling expenses in counties of 29,400 to 29,450 and other counties

Section 1. In counties having a population of not less than twenty-nine thousand, four hundred (29,400) and not more than twenty-nine thousand, four hundred and fifty (29,450), in counties having a popu-

lation of not less than thirteen thousand, six hundred (13,600) and not more than thirteen thousand, seven hundred (13,700), and counties having a population of not less than thirty four thousand, six hundred and forty (34,640) and not more than thirty four thousand, six hundred and sixty (34,660), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-a. In counties having a population of not less than thirteen thousand, six hundred and thirty-seven (13,637) and not more than thirteen thousand, six hundred and forty (13,640) according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent; and provided further that the provisions of this Act shall apply to counties having a population of not less than seventeen thousand, five hundred and fifty-five (17,555) and not more than seventeen thousand, five hundred and sixty (17,560) according to the last preceding Federal Census, and that the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. Acts 1937, 45th Leg., p. 199, ch. 105.

Effective April 6, 1937.

Section 2 of this Act repeals all conflicting laws and parts of laws and section 3 declared an emergency making the act effective on and after its passage.

Title of Act:

An Act providing for the amount that may be allowed by County Boards of Trus-

tees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in certain counties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 199, ch. 105.]

#### Art. 2700d—13. Office and traveling expenses in counties of 32,400 to 32,500

In counties having a population of not less than thirty-two thousand, four hundred (32,400) and not more than thirty-two thousand, five hundred (32,500), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of One Thousand Dollars (\$1,000) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 254, ch. 132, § 1.]

Effective April 9, 1937.

Section 2 of this Act repeals all conflicting laws and parts of laws and section

3 declares an emergency making the act effective on and after its passage.

## Title of Act:

An Act providing for the amount that may be allowed by County Boards of Trustees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in certain coun-

ties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict therewith, and declaring an emergency. Acts 1937, 45th Leg., p. 254, ch. 132.

**Art. 2700d—14. Office and traveling expenses in counties of 27,441 to 27,450 and other counties**

In counties having a population of not less than twenty-seven thousand, four hundred and forty-one (27,441) and not more than twenty-seven thousand, four hundred and fifty (27,450), and in counties having a population of not less than twenty thousand and forty-eight (20,048) and not more than twenty thousand and fifty-five (20,055), and in counties having a population of not less than twenty-five thousand, three hundred and ninety-four (25,394) and not more than twenty-five thousand, four hundred (25,400), and in counties having a population of not less than ten thousand, nine hundred seventy-five (10,975) and not more than ten thousand, nine hundred and eighty-five (10,985), according to the last preceding Federal Census, and the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; providing that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. Acts 1937, 45th Leg., p. 258, ch. 135, § 1.

Effective April 9, 1937.

Section 2 of this Act repeals all conflicting laws and parts of laws and section 3 declares an emergency making the act effective on and after its passage.

## Title of Act:

An Act providing for the amount that may be allowed by County Boards of Trus-

tees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in certain counties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict therewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 258, ch. 135.]

**Art. 2700d—15. Office and traveling expenses in counties of 10,050 to 10,075 and certain other counties**

Section 1. In counties having a population of not less than ten thousand and fifty (10,050) and not more than ten thousand and seventy-five (10,075), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1-a. In counties having a population of not less than thirty-two thousand, three hundred and twelve (32,312) and not more than thirty-two thousand, three hundred and twenty (32,320), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions that they deem necessary for office and traveling expenses of County Superintendent of Public Instruction, provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed



shall be paid in the manner and in accordance with now existing laws governing the maintenance of office of the County Superintendent.

Sec. 1-b. In counties having a population of not more than twenty-four thousand, one hundred and eighty (24,180) and not less than twenty-four thousand and forty (24,040), and in counties having a population of not more than forty-six thousand, two hundred and eighty (46,280) and not less than forty-six thousand, one hundred and eighty (46,180), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions that they deem necessary for office and traveling expenses of County Superintendent of Public Instruction, provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of office of the County Superintendent. Acts 1937, 45th Leg., p. 395, ch. 197.

Effective April 23, 1937.

Section 2 of this Act repeals all conflicting laws and parts of laws and section 3 declares an emergency making the act effective on and after its passage.

Title of Act:

An Act providing for the amount that may be allowed by County Boards of Trus-

tees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in certain counties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 395, ch. 197.]

#### Art. 2700d—16. Office and traveling expenses of county superintendents and assistants in counties of enumerated population

In counties with a population of not less than sixteen thousand, six hundred (16,600) and not more than seventeen thousand, sixty (17,060); and in counties having a population of not less than thirty-eight thousand, seven hundred and sixty (38,760) inhabitants and not more than thirty-eight thousand, seven hundred and eighty (38,780) inhabitants; and in counties having a population of not less than twenty-six thousand, three hundred and eighty-two (26,382) and not more than twenty-six thousand, four hundred (26,400) inhabitants; and in counties having a population of not less than twenty-three thousand, six hundred and sixty-nine (23,669) nor more than twenty-three thousand, seven hundred and seventy-five (23,775) inhabitants; and in counties having a population of not less than nineteen thousand, one hundred and seventy-three (19,173) nor more than nineteen thousand, one hundred and eighty-three (19,183) inhabitants; and in counties having a population of not less than seventeen thousand, five hundred and sixty-five (17,565) nor more than seventeen thousand, five hundred and eighty-five (17,585) inhabitants; and in counties having a population of not less than forty-eight thousand, five hundred and eighteen (48,518) nor more than forty-eight thousand, five hundred and thirty-eight (48,538) inhabitants; and in counties having a population of not less than fifty-three thousand, nine hundred and twenty-five (53,925) nor more than fifty-three thousand, nine hundred and forty-seven (53,947) inhabitants; and in counties having a population of not less than thirty-three thousand, three hundred and seven (33,307) nor more than thirty-three thousand, three hundred and twenty-eight (33,328) inhabitants; and in counties having a population of not less than thirty-one thousand, three hundred and ninety-five (31,395) nor more than thirty-one thousand, four hundred (31,400) inhabitants; and in counties having a population of not less than fourteen thousand, nine hundred and ten (14,910) nor more than fourteen thousand, nine hundred and seventeen (14,917) inhabitants; and in counties having a population of not less than eight thousand, six hundred (8,600) nor more than eight thousand, six hundred and ten (8,610) inhabitants; and in counties hav-

ing a population of not less than five thousand, six hundred and sixty-five (5,665) nor more than five thousand, six hundred and seventy (5,670) inhabitants; and in counties having a population of not less than twelve thousand, one hundred and eighty-five (12,185) nor more than twelve thousand, one hundred and ninety (12,190) inhabitants; and in counties having a population of not less than five thousand, five hundred and eighty-five (5,585) nor more than five thousand, five hundred and eighty-nine (5,589) inhabitants; and in counties having a population of not less than forty-one thousand, twenty (41,020) nor more than forty-one thousand, thirty (41,030) inhabitants; and in counties having a population of not less than forty-three thousand, thirty-five (43,035) nor more than forty-three thousand, forty (43,040) inhabitants; and in counties having a population of not less than twenty thousand, one hundred (20,100) nor more than twenty thousand, one hundred and fifty (20,150) inhabitants; and in counties having a population of not less than nine thousand, twenty-five (9,025) nor more than nine thousand, fifty (9,050) inhabitants; and in counties having a population of not less than thirty-nine thousand, one hundred (39,100) and not more than thirty-nine thousand, one hundred and ten (39,110) inhabitants; and in counties having a population of not less than twelve thousand, three hundred and seventy (12,370) nor more than twelve thousand, three hundred and eighty (12,380) inhabitants; and in counties having a population of not less than thirteen thousand, five hundred and seventy (13,570) and not more than thirteen thousand, five hundred and eighty (13,580) inhabitants; and in counties having a population of not less than thirty-four thousand, one hundred and fifty-five (34,155) nor more than thirty-four thousand, one hundred and sixty (34,160) inhabitants; and in counties having a population of not less than twelve thousand, seven hundred and eighty-five (12,785) nor more than twelve thousand, seven hundred and ninety (12,790) inhabitants; and in counties having a population of not less than nineteen thousand, three hundred and twenty (19,320) nor more than nineteen thousand, three hundred and twenty-five (19,325) inhabitants; and in counties having a population of not less than fourteen thousand, one hundred and eighty (14,180) nor more than fourteen thousand, one hundred and eighty-five (14,185) inhabitants; and in counties having a population of not less than twenty-four thousand, two hundred and thirty (24,230) nor more than twenty-four thousand, two hundred and thirty-five (24,235) inhabitants; and in counties having a population of not less than six thousand, six hundred and ninety-five (6,695) nor more than six thousand, seven hundred (6,700) inhabitants; and in counties having a population of not less than sixteen thousand, five hundred and sixty (16,560) nor more than sixteen thousand, five hundred and sixty-five (16,565) inhabitants; and in counties having a population of not less than five thousand, two hundred and fifty (5,250) nor more than five thousand, two hundred and fifty-five (5,255) inhabitants; and in counties having a population of not less than sixteen thousand, six hundred and sixty-five (16,665) nor more than sixteen thousand, six hundred and seventy (16,670) inhabitants; and in counties having a population of not less than twelve thousand, three hundred and sixty (12,360) nor more than twelve thousand, four hundred and twenty (12,420) inhabitants; and in counties having a population of not less than thirteen thousand, five hundred and sixty (13,560) nor more than thirteen thousand, five hundred and eighty-five (13,585) inhabitants; and in counties having a population of not less than eight thousand, five hundred and ninety (8,590) nor more than eight thousand, eight hundred and ninety (8,890) inhabitants; and in counties having a population of not less than nine thousand, two

hundred and ninety (9,290) and nor more than nine thousand, four hundred (9,400) inhabitants; and in counties having a population of not less than six thousand, eight hundred (6,800) and not more than six thousand, eight hundred and thirty (6,830) inhabitants; and in counties having a population of not less than seventeen thousand, four hundred and forty-five (17,445) and not more than seventeen thousand, four hundred and sixty-five (17,465) inhabitants; and in counties having a population of not less than eleven thousand, twenty-one (11,021) and not more than eleven thousand, fifty (11,050) inhabitants; and in counties having a population of not less than sixteen thousand, twenty (16,020) and not more than sixteen thousand, five hundred (16,500) inhabitants according to the last Federal Census in each instance, the County Boards of Trustees may make such provisions as they deem necessary for office and/or traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for such necessary office and/or traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount of such expenses so allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent of Public Instruction. [Acts 1937, 45th Leg., p. 836, ch. 411, § 1.]

Effective May 23, 1937.

Section 2 repeals all conflicting laws or parts of laws, general or special. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act prescribing the maximum amount that may be allowed by County Boards of Trustees to the County Superintendents of Public Instruction for expenditures for office and/or traveling expenses in counties with a population of not less than sixteen thousand, six hundred (16,600) and not more than seventeen thousand, sixty (17,060); and in counties having a population of not less than thirty-eight thousand, seven hundred and sixty (38,760) inhabitants and not more than thirty-eight thousand, seven hundred and eighty (38,780) inhabitants; and in counties having a population of not less than twenty-six thousand, three hundred and eighty-two (26,382) and not more than twenty-six thousand, four hundred (26,400) inhabitants; and in counties having a population of not less than twenty-three thousand, six hundred and sixty-nine (23,669) nor more than twenty-three thousand, seven hundred and seventy-five (23,775) inhabitants; and in counties having a population of not less than nineteen thousand, one hundred and seventy-three (19,173) nor more than nineteen thousand, one hundred and eighty-three (19,183) inhabitants; and in counties having a population of not less than seventeen thousand, five hundred and sixty-five (17,565) nor more than seventeen thousand, five hundred and eighty-five (17,585) inhabitants; and in counties having a population of not less than forty-eight thousand, five hundred and eighty-eight (48,518) nor more than forty-eight thousand, five hundred and

thirty-eight (48,538) inhabitants; and in counties having a population of not less than fifty-three thousand, nine hundred and twenty-five (53,925) nor more than fifty-three thousand, nine hundred and forty-seven (53,947) inhabitants; and in counties having a population of not less than thirty-three thousand, three hundred and seven (33,307) nor more than thirty-three thousand, three hundred and twenty-eight (33,328) inhabitants; and in counties having a population of not less than thirty-one thousand, three hundred and ninety-five (31,395) nor more than thirty-one thousand, four hundred (31,400) inhabitants; and in counties having a population of not less than fourteen thousand, nine hundred and ten (14,910) nor more than fourteen thousand, nine hundred and seventeen (14,917) inhabitants; and in counties having a population of not less than eight thousand, six hundred (8,600) nor more than eight thousand, six hundred and ten (8,610) inhabitants; and in counties having a population of not less than five thousand, six hundred and sixty-five (5,665) nor more than five thousand, six hundred and seventy (5,670) inhabitants; and in counties having a population of not less than twelve thousand, one hundred and eighty-five (12,185) nor more than twelve thousand, one hundred and ninety (12,190) inhabitants; and in counties having a population of not less than five thousand, five hundred and eighty-five (5,585) nor more than five thousand, five hundred and eighty-nine (5,589) inhabitants; and in counties having a population of not less than forty-one thousand, twenty (41,020) nor more than forty-one thousand, thirty (41,030) inhabitants; and in counties having a population of not less than forty-three thousand, thirty-five (43,035) nor more than forty-three thousand,

forty (43,040) inhabitants; and in counties having a population of not less than twenty thousand, one hundred (20,100) nor more than twenty thousand, one hundred and fifty (20,150) inhabitants; and in counties having a population of not less than nine thousand, twenty-five (9,025) nor more than nine thousand, fifty (9,050) inhabitants; and in counties having a population of not less than thirty-nine thousand, one hundred (39,100) and not more than thirty-nine thousand, one hundred and ten (39,110) inhabitants; and in counties having a population of not less than twelve thousand, three hundred and seventy (12,370) nor more than twelve thousand, three hundred and eighty (12,380) inhabitants; and in counties having a population of not less than thirteen thousand, five hundred and seventy (13,570) and not more than thirteen thousand, five hundred and eighty (13,580) inhabitants; and in counties having a population of not less than thirty-four thousand, one hundred and fifty-five (34,155) nor more than thirty-four thousand, one hundred and sixty (34,160) inhabitants; and in counties having a population of not less than twelve thousand, seven hundred and eighty-five (12,785) nor more than twelve thousand, seven hundred and ninety (12,790) inhabitants; and in counties having a population of not less than nineteen thousand, three hundred and twenty (19,320) nor more than nineteen thousand, three hundred and twenty-five (19,325) inhabitants; and in counties having a population of not less than fourteen thousand, one hundred and eighty (14,180) nor more than fourteen thousand, one hundred and eighty-five (14,185) inhabitants; and in counties having a population of not less than twenty-four thousand, two hundred and thirty (24,230) nor more than twenty-four thousand, two hundred and thirty-five (24,235) inhabitants; and in counties having a population of not less than six thousand, six hundred and ninety-five (6,695) nor more than six thousand, seven hundred (6,700) inhabitants; and in counties having a population of not less than sixteen thousand,

five hundred and sixty (16,560) nor more than sixteen thousand, five hundred and sixty-five (16,565) inhabitants; and in counties having a population of not less than five thousand, two hundred and fifty (5,250) nor more than five thousand, two hundred and fifty-five (5,255) inhabitants; and in counties having a population of not less than sixteen thousand, six hundred and sixty-five (16,665) nor more than sixteen thousand, six hundred and seventy (16,670) inhabitants; and in counties having a population of not less than twelve thousand, three hundred and sixty (12,360) nor more than twelve thousand, four hundred and twenty (12,420) inhabitants; and in counties having a population of not less than thirteen thousand, five hundred and sixty (13,560) nor more than thirteen thousand, five hundred and eighty-five (13,585) inhabitants; and in counties having a population of not less than eight thousand, five hundred and ninety (8,590) nor more than eight thousand, eight hundred and ninety (8,890) inhabitants; and in counties having a population of not less than nine thousand, two hundred and ninety (9,290) and not more than nine thousand, four hundred (9,400) inhabitants; and in counties having a population of not less than six thousand, eight hundred (6,800) and not more than six thousand, eight hundred and thirty (6,830) inhabitants; and in counties having a population of not less than seventeen thousand, four hundred and forty-five (17,445) and not more than seventeen thousand, four hundred and sixty-five (17,465) inhabitants; and in counties having a population of not less than eleven thousand, twenty-one (11,021) and not more than eleven thousand, fifty (11,050) inhabitants; and in counties having a population of not less than sixteen thousand, twenty (16,020) nor more than sixteen thousand, five hundred (16,500) inhabitants according to the last Federal Census in each instance; repealing all laws or parts of laws in conflict herewith; and declaring an emergency. [Acts 1937, 45th Leg., p. 836, ch. 411.]

**Art. 2700d—17. Salary and expenses of superintendents in counties of enumerated population**

Section 1. In all counties of the State of Texas having a population of not less than thirty-two thousand eight hundred (32,800) and not more than thirty-two thousand eight hundred thirty (32,830), and in all counties having a population of not less than twenty-four thousand (24,000) and not more than twenty-four thousand sixty-three (24,063), and in all counties having a population of not less than thirty-seven thousand nine hundred (37,900) and not more than thirty-seven thousand nine hundred fifty (37,950), and in counties having a population of not less than twenty-seven thousand four hundred twenty-five (27,425) and not more than twenty-seven thousand four hundred sixty (27,460), and in counties having a population of not less than thirty-one thousand three hundred twenty-five (31,325) and not more than thirty-

one thousand four hundred twenty-five (31,425), and in counties having a population of not less than forty-eight thousand five hundred (48,500) and not more than forty-eight thousand five hundred seventy-five (48,575), and in counties having a population of not less than eleven thousand four hundred (11,400) and not more than eleven thousand five hundred (11,500), and in counties having a population of not less than seventeen thousand seven hundred sixty (17,760) and not more than seventeen thousand seven hundred eighty (17,780), the salary of the County Superintendent of Public Instruction shall be not less than Two Thousand Seven Hundred Fifty (\$2,750.00) Dollars and not more than Three Thousand (\$3,000.00) Dollars per annum, the amount of which salary shall be fixed by the order of the County Board of Education for the respective counties, and the County Board of Education for each of the counties coming within this bill shall, by order entered in its minutes, set the salary for each of their respective counties.

**Allowance out of State and County Available School Fund; proration of allowance**

Sec. 2. In making the annual per capita apportionment to the public free schools, the County Board of Education of each of the several counties mentioned in Section 1 of this Act shall also make an annual allowance out of the State and County Available School Fund not exceeding the sum of Three Thousand (\$3,000.00) Dollars for the salary of the County Superintendent of Public Instruction and Six Hundred (\$600.00) Dollars for traveling expenses incidental to and necessary in the administration of the County Superintendent's office annually, and the same shall be prorated to the schools in said county in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners' Court of each of said counties may expend out of the General Fund of said counties not to exceed Three Hundred (\$300.00) Dollars per annum to defray the office expenses for stamps, stationery, telephone, and printing, incidental to and necessary in the efficient administration of the schools of said counties respectively.

**Salaries in counties having enumerated population**

Sec. 3. In all counties of the state of Texas having a population of not less than sixteen thousand five hundred fifty (16,550) nor more than sixteen thousand six hundred (16,600) according to the last United States Federal Census, the salary of the County Superintendent of Public Instruction shall be fixed by order of the County Board of Education in and for such counties at an amount not less than Eighteen Hundred (\$1800.00) Dollars per year nor more than Two Thousand Two Hundred and Fifty (\$2,250.00) Dollars per year, and said salary shall be exclusive of any and all traveling expenses allowed by law; and in all counties having a population of not less than seventeen thousand five hundred sixty-five (17,565) nor more than seventeen thousand six hundred (17,600) according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be fixed by order of the County Board of Education in and for such counties at an amount not less than Nineteen Hundred (\$1900.00) Dollars per year nor more than Two Thousand Two Hundred and Fifty (\$2,250.00) Dollars per year, and said salary shall be exclusive of any and all traveling expenses allowed by law.

**Time for payment of salaries and expenses**

Sec. 4. The salary and traveling expenses provided for herein shall be paid monthly, upon the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the said County Superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education. That the office expenses provided herein shall be paid by the County Treasurer on the order of the Commissioners' Court as said expenses may be incurred. Acts 1937, 45th Leg., p. 1276, ch. 477.

Effective June 9, 1937.

Section 5 of this act repeals all conflicting laws and parts of laws. Section 6 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to provide for a more adequate and equitable salary of County Superin-

tendents of Public Instruction in all those counties of the State of Texas coming within the brackets and population figures herein named; providing for traveling expenses and/or office expenses for said officers; and repealing all laws and parts of laws in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 1276, ch. 477.]

**Art. 2700d—18. Salary and expenses of Superintendents in counties of enumerated population**

Section 1. In counties having a population of not less than twenty-one thousand, eight hundred and sixteen (21,816) and not more than twenty-one thousand, eight hundred and twenty-six (21,826); in all counties having a population of not less than forty-one thousand (41,000) and not more than forty-two thousand (42,000); in counties having a population of not less than thirteen thousand, three hundred and eighty-five (13,385) and not more than thirteen thousand, three hundred and ninety-five (13,395); in counties having a population of not less than nineteen thousand, eight hundred and forty-three (19,843) and not more than nineteen thousand, eight hundred and fifty-three (19,853); in counties having a population of not less than thirty-six thousand (36,000) and not more than thirty-six thousand and fifty (36,050); and in counties having a population of not less than twenty-nine thousand, seven hundred (29,700) and not more than twenty-nine thousand, seven hundred and fifty (29,750) according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; providing that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum.

**Salaries in certain counties**

Sec. 2. In all Counties of the State of Texas having a population of not less than seventeen thousand six hundred and sixty (17,660) inhabitants and not more than seventeen thousand eight hundred and fifty (17,850) inhabitants according to the preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than Two Thousand Seven Hundred Fifty (\$2,750.00) Dollars and not more than Three Thousand (\$3,000.00) Dollars per annum; and in all Counties of the State of Texas having a population of not less than twenty nine thousand seven hundred (29,700) and not more than twenty nine thousand seven hundred fifty (29,750) inhabitants according to the last preceding Federal Census, the salary of the County Superintendent shall from and after the passage of this Act be not less than the sum of Twenty Four Hundred (\$2,400.00) Dollars per annum nor more than the sum of Three Thousand (\$3,000.00) Dollars per annum, the

amount of which salary shall be fixed by the order of the County Board of Education for the said Counties, and the County Board of Education for each of the Counties coming within the terms of this bill shall by order entered in its minutes set the salary for each of their respective Counties.

The amount of salaries allowed hereunder shall be paid in the manner and in accordance with the now existing laws governing the maintenance of the office of the County Superintendent; provided, however, the salary herein provided for shall be paid monthly upon order of the County School Trustees; and provided further that the salary for the month of September shall not be paid until the County Superintendent of Public Instruction shall have presented a receipt or a certificate from the State Superintendent of Public Instruction showing that he has made all the reports required of him by the State Superintendent of Public Instruction. As amended Acts 1939, 46th Leg., Spec.L., p. 632, § 1.

Effective May 17, 1939.

**Allowance out of State and County Available School Fund; proration of allowance**

Sec. 2a. In making the annual per capita apportionment to the public free schools, the County Board of Education of each of the counties coming under Section 2 of this Act shall also make an annual allowance out of the State and County Available School Fund not exceeding the sum of Three Thousand Dollars (\$3,000) for the salary of the County Superintendent of Public Instruction and Six Hundred Dollars (\$600) for traveling expenses incidental to and necessary in the administration of the County Superintendent's office annually, and the same shall be prorated to the schools in said counties in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners Court of each of said counties may expend out of the General Fund of said counties not to exceed Three Hundred Dollars (\$300) per annum to defray the office expenses for stamps, stationery, telephone, and printing, incidental to and necessary in the efficient administration of the schools of said counties respectively.

**Monthly payments of salaries and expenses; prerequisites**

Sec. 2b. The salary and traveling expenses provided for in Sections 2 and 2a shall be paid monthly, upon the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the said County Superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education. That the office expenses provided herein shall be paid by the County Treasurer on the order of the Commissioners Court as said expenses may be incurred.

**Salaries and expenses in counties of 30,000 to 31,000 population**

Sec. 2c. In all counties in the State of Texas having a population of not less than thirty thousand (30,000) nor more than thirty thousand and one hundred (30,100), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than Twenty-seven Hundred and Fifty Dollars (\$2,750) nor more than Three Thousand Dollars (\$3,000) per annum, the amount of which salary shall be fixed by the order of the County Board of Education for the respective county.

Subsection 1. In making the annual per capita apportionment to the public free schools, the County Board of Education of each such county

mentioned in Section 1 of this Act shall also make an annual allowance out of the State and County Available School Fund not exceeding the sum of Three Thousand Dollars (\$3,000) for the salary of the County Superintendent of Public Instruction and Six Hundred Dollars (\$600) for traveling expenses incidental to and necessary in the administration of the County Superintendent's office annually, and the same shall be prorated to the schools in said county in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners Court of each of said counties may expend out of the General Fund of said county not to exceed Three Hundred Dollars (\$300) per annum to defray the office expense for stamps, stationery, telephone and printing incidental to and necessary in the efficient administration of the schools in said counties respectively.

Subsection 2. The salary and traveling expenses provided for herein shall be paid monthly on the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the County Superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education. That the office expense provided herein shall be paid by the County Treasurer on the order of the Commissioners Court as said expenses may be incurred. [Acts 1937, 45th Leg., 1st C.S., p. 1805, ch. 29.]

Effective July 6, 1937.

Section 3 repeals all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

Section 3 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for the amount that may be allowed by County Boards of Trustees to the County Superintendents of Public Instruction for expenditures for

office and traveling expenses in certain counties according to the last preceding Federal Census; providing conditions and regulations relative to payment of salaries, etc.; fixing the salaries of the County Superintendents of Public Instruction in certain counties; providing for the amount that may be allowed for traveling expenses and office expenditures; providing conditions and regulations relative to the payment of salaries and traveling expenses; repealing all laws and parts of laws, General or Special, in conflict therewith; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1805, ch. 29.]

**Art. 2700d—19. County superintendent—expenses—counties of population**

Section 1. In counties having a population of not less than twenty-one thousand, eight hundred and thirty-five (21,835) and not more than twenty-one thousand, eight hundred and fifty (21,850), and in counties having a population of not less than fifty thousand (50,000) and not more than fifty thousand, one hundred (50,100), and in counties having a population of not less than forty-eight thousand, nine hundred (48,900) and not more than forty-nine thousand (49,000), according to the last preceding Federal Census, the county boards of trustees may make such provisions as they deem necessary for office and traveling expenses of the county superintendent of public instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the county superintendent.

**Act cumulative**

Sec. 2. The provisions of this Act shall be cumulative of all General Laws on the subject and where not otherwise provided herein, such General Laws shall apply; but, in case of conflict, the provisions



of this Act shall control and be effective. [Acts 1937, 45th Leg., 2nd C.S., p. 1944, ch. 43.]

Effective Nov. 3, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the amount that may be allowed by county boards of trustees to the county superintendents of public instruction for expenditures for office

and traveling expenses in certain counties according to the last preceding Federal Census; making this Act cumulative of all General Laws on the same subject, such General Laws to apply except in case of conflict when the provisions of this Act shall control; and declaring an emergency. Acts 1937, 45th Leg., 2nd C.S., p. 1944, ch. 43.

#### Art. 2700d—20. Superintendent's salary in counties of 15,760 to 15,790

From and after the effective date of this Act in all counties having a population of not less than fifteen thousand, seven hundred and sixty (15,760) and not more than fifteen thousand, seven hundred and ninety (15,790), and having an area of three hundred and twelve (312) square miles according to the last preceding Federal Census, the county board of trustees shall make provision for the salary of the county superintendent of public instruction in the sum of Four Thousand Dollars (\$4,000) per year and no more. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the payment of maintenance and salaries of county superintendents. Acts 1939, 46th Leg., Spec.L., p. 631, § 1.

Effective March 31, 1939.

Section 2 of the Act of 1939 repealed all conflicting laws and parts of laws to the extent of conflict only. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing the salary of county

superintendents of public instruction in certain counties according to the last preceding Federal Census and according to area in square miles of such counties; repealing all laws and parts of laws in conflict, to the extent of the conflict only; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 631.

#### Art. 2700d—21. Travelling expenses of Superintendents in counties of 15,725 to 15,775 population

From and after the passage of this Act that all County Superintendents of Public Instruction in all counties having a population of not less than fifteen thousand seven hundred twenty-five (15,725) and not more than fifteen thousand seven hundred seventy-five (15,775) according to the last preceding Federal Census shall be and are allowed an additional Five Hundred (\$500.00) Dollars per year for traveling expenses. Acts 1939, 46th Leg., Spec.L., p. 652, § 1.

Effective April 24, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing for additional traveling expenses for County Superintendents of Public Instruction in counties of Texas

having a population of not less than fifteen thousand seven hundred twenty-five (15,725) and not more than fifteen thousand seven hundred seventy-five (15,775) according to the last preceding Federal Census, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 652.

#### Art. 2700d—22. Salary and expenses of Superintendents in counties of enumerated population

Section 1. From and after the passage of this Act in all counties of the State of Texas having a population of not less than fifty thousand (50,000) and not more than fifty-one thousand (51,000), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be not less than Three Thousand, Three Hundred Dollars (\$3,300) nor more than Three Thousand, Six Hundred Dol-

lars (\$3,600) per annum to be fixed by order of the board of education of such counties; and in counties having a population of not less than thirty-eight thousand, seven hundred and sixty-five (38,765) and not more than thirty-eight thousand, seven hundred and seventy-five (38,775), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be Three Thousand, Three Hundred Dollars (\$3,300) per annum; all counties in this State which have a population of not less than twenty-nine thousand, two hundred and ten (29,210) and not more than twenty-nine thousand, six hundred and thirty (29,630) according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be Three Thousand Dollars (\$3,000) per year or Two Hundred and Fifty Dollars (\$250) per month, to be paid in accordance with and in the manner as provided by general law governing the maintenance of the office of county superintendent, as provided in Article 2700, Revised Civil Statutes of Texas of 1925.

Sec. 2. In counties having a population of not less than seventy-seven thousand, seven hundred and fifty (77,750) and not more than seventy-seven thousand, eight hundred (77,800), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be Three Thousand, Six Hundred Dollars (\$3,600) per annum. Such salary shall be paid in accordance with existing laws governing such office.

Sec. 3. From and after the passage of this Act in all counties of the State of Texas having a population of not more than seventy thousand (70,000), according to the last preceding Federal Census, and having at least two (2) incorporated cities within their boundary with a population of more than thirteen thousand, eight hundred (13,800) each, according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be not less than the sum of Two Thousand, Eight Hundred Dollars (\$2,800) per annum nor more than the sum of Three Thousand, Eight Hundred Dollars (\$3,800) per annum, to be fixed by the county board of education of each of such counties, and in making the annual per capita apportionment to the schools of such counties, the county board of education of such counties shall make an annual allowance out of the State and county available school funds for the payment of the salary of the superintendents of public instruction for such counties; and in addition thereto, office expenses of an amount not in excess of Three Hundred Dollars (\$300) per annum for stamps, stationery and telephone; and said county board of education is also authorized to allow for traveling expenses of such county superintendents a sum not in excess of Three Hundred Dollars (\$300) per annum to defray the expenses incurred by such county superintendents, which said sum shall be paid by said county board of education upon certificate of such superintendents that the expenses have been incurred in the discharge of their duties as such superintendents, and the salary and expenses herein provided to be paid monthly upon the order of the school trustees; providing that the salaries for the month of September shall not be paid until the county superintendent of public instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him, that the expenses provided for herein shall be paid monthly by the county treasurer on the order of the county board of education.

Sec. 4. In counties having a population of not less than twenty thousand (20,000) and not more than twenty thousand and fifty (20,050)

according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be not less than the sum of Two Thousand, Five Hundred Dollars (\$2,500) per annum nor more than the sum of Three Thousand, Two Hundred Dollars (\$3,200) per annum, the amount of which salary shall be fixed by order of the county board of education for the respective counties, and the county board of education for each county coming within this section shall, by order entered in its minutes, set the salary for each of the respective counties. The salary allowed shall be paid in the manner and in accordance with existing laws governing the office of the county superintendent of public instruction.

Sec. 5. That the salary of the county superintendent of public instruction in all counties in Texas having not less than twenty-three thousand, three hundred (23,300) nor more than twenty-three thousand, four hundred (23,400) population, according to the last preceding Federal Census, and in all counties having not less than seventeen thousand, six hundred (17,600) nor more than seventeen thousand, six hundred and fifty (17,650) population, according to the last preceding Federal Census; in all counties having not less than fifteen thousand, seven hundred (15,700) nor more than fifteen thousand, seven hundred and thirty (15,730) population, according to the last preceding Federal Census, shall be, from and after the effective date of this Act, Two Thousand, Six Hundred Dollars (\$2,600) per year to be paid in twelve equal payments out of the State and county available school fund of such counties.

Sec. 6. From and after the passage of this Act in all counties of the State of Texas having a population of not more than thirty thousand, three hundred (30,300) nor less than thirty thousand, two hundred and seventy-five (30,275), according to the last preceding Federal Census, shall be not less than the sum of Two Thousand, Four Hundred Dollars (\$2,400) per annum nor more than the sum of Three Thousand, Two Hundred Dollars (\$3,200) per annum to be fixed by the county board of education of each of such counties, and in making the annual per capita apportionment to the schools of such counties, the county board of education of such counties shall make an annual allowance out of the State and county available school funds for the payment of the salary of the superintendent of public instruction for such counties payable in twelve equal payments out of the State and county available school fund of such counties.

Sec. 7. In all counties having a population of not less than eighteen thousand (18,000) and not more than eighteen thousand, five hundred (18,500), according to the last preceding Federal Census, the county board of education shall, in addition to the salaries and expenses fixed by law, allow not to exceed the sum of Three Hundred Dollars (\$300) per annum for the actual traveling expenses of such county superintendents made in the performance of their duties as county superintendents and to be paid out of the State and county available school fund of such counties on order of the county board of education of such counties on the verified account of such county superintendents.

Sec. 8. All laws and parts of laws, whether here referred to by article, title or number or not, general or special, in conflict herewith, are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the general law on the subject, and where not other-

wise modified hereby such general laws are made applicable. Acts 1939, 46th Leg., Spec.L., p. 643.

Effective April 25, 1939.

Section 9 of the act provided that: "If any section, subsection, paragraph, clause, or sentence of this Act be held for any reason invalid, such invalidity shall not affect the remaining portions of the Act, and the Legislature hereby declares that it would have enacted such remaining portion with the omission of those parts held invalid."

Section 10 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for a more adequate and equitable salary and certain expenses for county superintendents of public instruction in counties of Texas having a population of not less than fifty thousand (50,000) and not more than fifty-one thousand (51,000), according to the last preceding Federal Census; in counties having a population of not less than thirty-eight thousand, seven hundred and sixty-five (38,765) and not more than thirty-eight thousand, seven hundred and seventy-five (38,775), according to the last preceding Federal Census; in counties having a population of not less than twenty-nine thousand, two hundred and ten (29,210) and not more than twenty-nine thousand, six hundred and thirty (29,630), according to the last preceding Federal Census; in counties having a population of not less than seventy-seven thousand, seven hundred and fifty (77,750) and not more than seventy-seven thousand, eight hundred (77,800), according to the last preceding Federal Census; in counties having a population of not more than seventy thousand (70,000), ac-

ording to the last preceding Federal Census and having at least two (2) incorporated cities within their boundary, a population of more than thirteen thousand, eight hundred (13,800) each, according to the last preceding Federal Census; in counties having a population of not less than twenty thousand (20,000) and not more than twenty thousand and fifty (20,050), according to the last preceding Federal Census; in all counties in Texas having not less than twenty-three thousand, three hundred (23,300) nor more than twenty-three thousand, four hundred (23,400) population, according to the last preceding Federal Census; in all counties having not less than seventeen thousand, six hundred (17,600) nor more than seventeen thousand, six hundred and fifty (17,650) population, according to the last preceding Federal Census; in all counties having not less than fifteen thousand, seven hundred (15,700) nor more than fifteen thousand, seven hundred and thirty (15,730) population, according to the last preceding Federal Census; in counties having a population of not less than thirty thousand, two hundred and seventy-five (30,275) nor more than thirty thousand, three hundred (30,300), according to the last preceding Federal Census; in counties having not less than eighteen thousand (18,000) nor more than eighteen thousand, five hundred (18,500), according to the last preceding Federal Census; providing office and traveling expenses in certain counties; modifying all laws or parts of laws in conflict herewith; making the Act cumulative of the general law; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 643.

**Art. 2700d—23. Expenses of Superintendent and trustees in administration of scholastic affairs in certain counties**

That in each county of this State with a population of not less than thirty thousand, nine hundred and twenty (30,920) and not more than thirty thousand, nine hundred and twenty-five (30,925), and in counties having a population of not less than fourteen thousand, four hundred and sixty (14,460) and not more than fourteen thousand, four hundred and sixty-five (14,465), and in counties having a population of not less than seven thousand, one hundred (7,100) and not more than seven thousand, one hundred and twenty-five (7,125), as shown by the Federal Census last preceding such action, the County School Board of Trustees is hereby authorized to set aside from the Available School Funds of the county, in accordance with the provisions of the General Law governing the assessment for the support of the County Superintendent's Office, an amount not to exceed Six Hundred Dollars (\$600) to defray the expenses of the County Superintendent and County School Board of Trustees of such counties in the administration of the scholastic affairs of the county. Acts 1939, 46th Leg., Spec.L., p. 656, § 1.

Effective April 7, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section

3 declared an emergency and provided that the act should take effect from and after its passage.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Title of Act:**

An Act authorizing the County School Boards of Trustees of certain counties to set aside an amount not to exceed Six Hundred Dollars (\$600) to defray the expenses of the County Superintendent and

County School Board of Trustees in the administration of scholastic affairs; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 656.

**Art. 2700d—24. Travelling and other expenses of Superintendent and trustees in counties of 19,890 to 19,905 population**

Section 1. In counties having a population of not less than nineteen thousand, eight hundred and ninety (19,890) and not more than nineteen thousand, nine hundred and five (19,905), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 2. The provisions of this Act shall be cumulative of all General Laws on the subject and, where not otherwise provided herein, such General Laws shall apply; but, in case of conflict, the provisions of this Act shall control and be effective. Acts 1939, 46th Leg., Spec.L., p. 653.

Effective April 7, 1939.

Section 3 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for the amount that may be allowed by County Boards of Trustees to the County Superintendents of Public Instruction for expenditures for office

and traveling expenses in certain counties according to the last preceding Federal Census; making this Act cumulative of all General Laws on the same subject, such General Laws to apply except in case of conflict when the provisions of this Act shall control; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 653.

**Art. 2700d—25. Superintendent's salary in counties of 18,760 to 18,960 population**

In counties having a population of not less than eighteen thousand, seven hundred and sixty (18,760) and not more than eighteen thousand, nine hundred and sixty (18,960), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than the sum of One Thousand, Nine Hundred Dollars (\$1,900) per annum nor more than the sum of Two Thousand, Four Hundred Dollars (\$2,400) per annum, the amount of which salary shall be fixed by order of the County Board of Education for the respective counties, and the County Board of Education for each county coming within this Act shall, by order entered in its Minutes, set the salary for each of the respective counties. The salary allowed shall be paid in the manner and in accordance with existing laws governing the office of the County Superintendent of Public Instruction. Acts 1939, 46th Leg., Spec.L., p. 634, § 1.

Approved April 25, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for the amount of salary that may be paid by County Boards of Trustees to the County Superintendent of

Public Instruction in counties with a population of not less than eighteen thousand, seven hundred and sixty (18,760) and not more than eighteen thousand, nine hundred and sixty (18,960), according to the last preceding Federal Census; repealing all laws or parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 634.

**Art. 2700d—26. Superintendent's salary in counties of 29,750 to 30,025 population; reports**

Section 1. That the salary of the County Superintendent of Public Instruction of each county in Texas, having a population of not less than twenty-nine thousand, seven hundred and fifty (29,750) nor more than thirty thousand and twenty-five (30,025) according to the last Federal Census, shall from and after passage of this Act be not less than the sum of Three Thousand, Six Hundred Dollars (\$3,600) per annum.

Sec. 2. In making the annual per capita apportionment to the schools of the counties having a population of not less than twenty-nine thousand, seven hundred and fifty (29,750) and not more than thirty thousand and twenty-five (30,025) the County School Trustees shall make an annual allowance out of the State and County Available Funds for the payment of the salary of the Superintendent of Public Instruction not less than Three Thousand, Six Hundred Dollars (\$3,600).

Sec. 3. Said salary to be paid monthly upon the order of the County School Trustees, provided that said salary to the Superintendent of Public Instruction for the month of September shall not be paid until the Superintendent shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him. Acts 1939, 46th Leg., Spec.L., p. 640.

Effective April 20, 1939.

Section 4 of the act of 1939 repeals all conflicting laws and parts of laws; section 5 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act to fix the salary of the Superintendent of Public Instruction in each county in Texas, having a population of not

less than twenty-nine thousand, seven hundred and fifty (29,750) nor more than thirty thousand and twenty-five (30,025) according to the last Federal Census; providing the salary to be paid monthly; providing for the making of reports to the State Superintendent of Public Instruction; repealing all laws and parts of laws in conflict; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 640.

**Art. 2700d—27. Superintendent's salaries in counties having population of 22,100 to 22,500; 41,050 to 42,100; 22,600 to 22,800; 14,550 to 14,800; 11,021 to 11,050; reports**

Section 1. From and after the passage of this Act, the salary of the County Superintendent of Public Instruction of each county in Texas having a population of not less than twenty-two thousand, one hundred (22,100) and not more than twenty-two thousand, five hundred (22,500), according to the last preceding Federal Census, shall be Thirty-six Hundred Dollars (\$3600) per annum, to be paid in equal monthly payments out of the county's available per capita apportionment coming to such counties, upon the order of the County School Trustees.

Sec. 2. That the salary of the County Superintendent of Public Instruction of each county in Texas having a population of not less than forty-one thousand and fifty (41,050) and not more than forty-two thousand, one hundred (42,100), according to the last preceding Federal Census, shall from and after the passage of this Act be not less than the sum of Two Thousand, Eight Hundred Dollars, (\$2,800) per annum and not more than Three Thousand, Six Hundred Dollars (\$3,600) per annum, to be fixed by the County Board of Education of each county; and in addition thereto, the county superintendents of such counties shall receive office expenses for stamps, telephone, and stationery not exceeding Three Hundred Dollars (\$300) per annum, as well as an amount not in excess of Three Hundred Dollars (\$300) per annum to defray traveling expenses incurred by such county superintendents, which said sum shall

be paid by said County Board of Trustees on the certificate of such superintendent that the expenses had been incurred in the discharge of his duties as such superintendent.

Sec. 2-a. The salary and expenses provided for in Section 2 of this Act shall be paid monthly upon the order of the County School Trustees of such counties out of the county's available and State per capita apportionment coming to such counties; providing that the month of September shall not be paid until the County Superintendent of Public Instruction shall have presented a receipt or a certificate from the State Superintendent of Public Instruction showing that he has made all of the reports required by him.

Sec. 3. That the salaries of the County Superintendent of Public Instruction of each county in Texas having a population of not less than twenty-two thousand, six hundred (22,600) and not more than twenty-two thousand, eight hundred (22,800), according to the last preceding Federal Census, shall from and after the passage of this Act be not less than Twenty-two Hundred Dollars (\$2200) per annum and not more than Twenty-eight Hundred Dollars (\$2800) per annum, and in counties having a population of not less than fourteen thousand, five hundred and fifty (14,550) and not more than fourteen thousand, eight hundred (14,800), according to the last preceding Federal Census, shall from and after the passage of this Act be not less than the sum of Twenty-two Hundred Dollars (\$2200) and not more than Twenty-eight Hundred Dollars (\$2800) per annum, to be fixed by the County Board of Education in each county.

Sec. 4. That the salary of the Superintendent of Public Instruction of each county in Texas having a population of not less than eleven thousand and twenty-one (11,021), nor more than eleven thousand and fifty (11,050), according to the latest Federal Census, shall from and after the passage of this Act be not less than Twenty-one Hundred Dollars (\$2100) per annum, nor more than Twenty-four Hundred Dollars (\$2400) per annum; said salary to be set by the County Board of School Trustees of each county affected.

Sec. 4-a. The salary shall be paid monthly upon the order of the County Board of School Trustees; provided that the month of September shall not be paid until the Superintendent of Public Instruction shall have presented a receipt or a certificate from the State Superintendent of Public Instruction showing that he has made all reports required by him. Acts 1939, 46th Leg., Spec.L., p. 636.

Effective April 13, 1939.

Section 5 of this Act repeals all laws or parts of laws conflicting with the Act to the extent of such conflict; section 6 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to fix the salary of the County Superintendent of Public Instruction in counties having a population of not less than twenty-two thousand, one hundred (22,100) nor more than twenty-two thousand, five hundred (22,500); all counties having a population of not less than forty-one thousand and fifty (41,050) and not more than forty-two thousand, one hundred (42,

100); all counties having a population of not less than twenty-two thousand, six hundred (22,600) and not more than twenty-two thousand, eight hundred (22,800); all counties having a population of not less than fourteen thousand, five hundred and fifty (14,550) and not more than fourteen thousand, eight hundred (14,800); and in all counties having a population of not less than eleven thousand and twenty-one (11,021) and not more than eleven thousand and fifty (11,050), according to the last preceding Federal Census; repealing all laws or parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 636.

**Art. 2700d—28. Salary and expenses of Superintendents in counties of 197,000 to 198,000 and 32,400 to 32,800 population; proration of allowance; reports**

Section 1. In all counties of the State of Texas having a population of not less than one hundred and ninety-seven thousand (197,000) and not more than one hundred and ninety-eight thousand (198,000) and all counties with a population of not less than thirty-two thousand, four hundred (32,400) and not more than thirty-two thousand eight hundred (32,800), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be fixed by order of the County Board of Education in and for such counties at an amount not less than Three Thousand Dollars (\$3,000) per year and not more than Four Thousand, Two Hundred Dollars (\$4,200) per year and said salary shall be exclusive of any and all traveling expenses allowed by law.

Sec. 2. In making the annual per capita apportionment to the public free schools, the County Board of Education of each of the counties mentioned in Section 1 of this Act shall also make an annual allowance out of the State and County Available School Funds not exceeding the sum of Six Hundred Dollars (\$600) salary for traveling expenses incidental to and necessary in the administration of the county superintendent's office annually, and the same shall be prorated to the schools in said county in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners Court of said county may expend out of the General Fund of said counties not to exceed Three Hundred Dollars (\$300) per annum to defray the office expenses for stamps, stationery, telephone, etc., incidental to and necessary in the efficient administration of the schools of said counties respectively.

Sec. 3. The salary and traveling expenses provided for herein shall be paid monthly, upon the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the said county superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education; that the office expenses provided herein shall be paid by the County Treasurer on the order of the Commissioners Court as said expenses may be incurred. Acts 1939, 46th Leg., Spec.L., p. 649.

Effective April 20, 1939.

Section 4 of the act of 1939 repeals all conflicting laws and parts of laws; section 5 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to provide for a more adequate and equitable salary of county superintendents of public instruction in all counties of the State of Texas having a population of not less than one hundred and ninety-seven thousand (197,000) and not more than one hundred and ninety-eight thousand (198,000) and all counties with a population of not less

than thirty-two thousand, four hundred (32,400) and not more than thirty-two thousand, eight hundred (32,800), according to the last preceding Federal Census; providing for the traveling expenses and/or office expenses for said offices; providing the salary specified herein shall be paid monthly; providing certain salary shall not be paid until reports have been filed with the State Department of Education; providing how office expenses may be paid; and repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 649.

**Art. 2700d—29. Travelling expenses of Superintendents in counties of 22,500 to 22,600 population**

In all counties having a population of not less than twenty-two thousand, five hundred (22,500) and not more than twenty-two thou-



sand, six hundred (22,600), according to the last preceding Federal Census or any subsequent Federal Census, the county board of school trustees shall make provisions for the traveling expenses of the county superintendent of public instruction, and shall make an allowance for such traveling expenses in the sum of Six Hundred Dollars (\$600) per annum, and no more. The amount allowed herein shall be paid in twelve (12) monthly installments and in the same manner as the salary and maintenance of the office of county superintendents are now paid. Acts 1939, 46th Leg., Spec.L., p. 654, § 1.

Effective April 20, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing the amount of traveling expenses that shall be allowed by the coun-

ty board of trustees to the county superintendent of public instruction for expenditures for traveling expenses in certain counties, according to the last preceding Federal Census or any subsequent Federal Census; repealing all laws and parts of laws in conflict herewith to the extent of the conflict only; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 654.

**Art. 2700d—30. Superintendent's salary in counties of 14,535 to 14,555 population**

In all counties of the State of Texas having a population of not less than fourteen thousand, five hundred and thirty-five (14,535) and not more than fourteen thousand, five hundred and fifty-five (14,555) inhabitants, according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than Eighteen Hundred Dollars (\$1800) and not more than Twenty-four Hundred Dollars (\$2400) per annum, the amount of which salary shall be fixed by the order of the County Boards of Education for the respective counties; and the County Board of Education for each of the counties coming within this Act shall, by order entered in its Minutes, set the salary for its respective county. Acts 1939, 46th Leg., Spec.L., p. 630, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to provide a more adequate and equitable salary of County Superintendents

of Public Instruction; and providing that said salary may be fixed by the County Board of Education in all of those counties of the State of Texas coming within the brackets and population figures herein named; and repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 630.

**Art. 2700d—31. Travelling and office expenses of Superintendents in counties of 13,400 to 13,500 and 5,180 to 5,190 population**

In all counties having a population of not less than thirteen thousand, four hundred (13,400) and not more than thirteen thousand, five hundred (13,500), and in all counties having a population of not less than five thousand, one hundred and eighty (5,180) and not more than five thousand, one hundred and ninety (5,190), according to the last preceding Federal Census, the County Board of School Trustees may make provisions for the traveling and office expenses of the County Superintendent of Public Instruction, and may make an allowance for such traveling and office expenses not exceeding the sum of Six Hundred Dollars (\$600) per annum. The amount allowed herein shall be paid in twelve (12) monthly installments and in the same manner as the salary

and maintenance of the office of County Superintendents are now paid. Acts 1939, 46th Leg., Spec.L., p. 651, § 1.

Effective April 14, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing the amount of traveling and office expenses that shall be allowed

by the County Board of Trustees to the County Superintendent of Public Instruction for the expenditures for traveling and office expenses in certain counties, according to the last preceding Federal Census; repealing all laws and parts of laws in conflict herewith to the extent of the conflict only; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 651.

**Art. 2700d—32. Salary of Superintendent in counties of 23,880 to 23,890 and 6,000 to 6,010 population**

In all counties containing a population of not more than twenty-three thousand, eight hundred and ninety (23,890) and not less than twenty-three thousand, eight hundred and eighty (23,880) according to the Federal Census of 1930, and containing a scholastic population of not more than six thousand and ten (6,010) and not less than six thousand (6,000) according to the 1938-1939 Public School Directory of the State Department of Education, the County Superintendent of Schools shall receive from the Available School Fund of their respective counties an annual salary of not less than Two Thousand, Two Hundred Dollars (\$2,200) nor more than Two Thousand, Four Hundred Dollars (\$2,400), said salary to be fixed by the County Board of School Trustees of the respective counties. Acts 1939, 46th Leg., Spec.L., p. 639, § 1.

Effective April 25, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for salary to be paid the County Superintendent of Schools in certain counties; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 639.

**Art. 2700d—33. Salary of Superintendent in counties of 43,125 to 43,200 population**

Section 1. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than forty-three thousand, one hundred and twenty-five (43,125), and not more than forty-three thousand, two hundred (43,200), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Three Thousand, Two Hundred and Fifty Dollars (\$3,250) per annum, to be paid in accordance with and in the manner as provided by a General Law governing the maintenance of the office of County Superintendent of Public Instruction.

Sec. 2. All laws and part of laws either here referred to by article, title, or number, General or Special, in conflict herewith are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the General Law on this subject, but where not otherwise modified hereby, such General Laws are made applicable. Acts 1939, 46th Leg., Spec.L., p. 647.

Effective April 20, 1939.

Section 3 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for more adequate and equitable salary for County Superintendents

of Public Instruction in all those counties of Texas coming within the brackets and population figures herein, specifically in all those counties having not less than forty-three thousand, one hundred and twenty-five (43,125), and not more than forty-three thousand, two hundred (43,200), according to

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

the last preceding Federal Census; modifying all laws or parts of laws in conflict herewith; making the Act cumulative of the General Law; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 647.

#### Art. 2700d—34. Salary in counties of 20,790 to 20,825

Section 1. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than twenty thousand, seven hundred and ninety (20,790) and not more than twenty thousand, eight hundred and twenty-five (20,825), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Twenty-four Hundred Dollars (\$2400) per annum, to be paid in accordance with and in the manner as provided by General Law governing the maintenance of the office of County Superintendent of Public Instruction.

Sec. 2. All laws and parts of laws either here referred to by Article, Title, or Number, general or special, in conflict herewith are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the General Law on this subject, but where not otherwise modified hereby, such General Laws are made applicable. Acts 1939, 46th Leg., Spec.L., p. 635.

Effective May 19, 1939.

Section 3 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

##### Title of Act:

An Act providing for more adequate and equitable salaries for County Superintendents of Public Instruction in all those counties of Texas coming within the brackets and population figures herein, especially in all

those counties having not less than twenty thousand, seven hundred and ninety (20,790) and not more than twenty thousand, eight hundred and twenty-five (20,825), according to the last preceding Federal Census; modifying all laws or parts of laws in conflict herewith; making the Act cumulative of the General Law; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 635.

#### Art. 2700d—35. Salary and office and traveling expenses in counties of 10,360 to 10,380 and counties of 10,399 to 10,499

Section 1. That the salary of the Superintendent of Public Instruction in each county in Texas having a population of not less than ten thousand, three hundred and sixty (10,360) and not more than ten thousand, three hundred and eighty (10,380), and in each county having a population of not less than ten thousand, three hundred and ninety-nine (10,399) and not more than ten thousand, four hundred and ninety-nine (10,499) inhabitants, according to the last preceding Federal Census, shall from and after the passage of this Act be Twenty-four Hundred Dollars (\$2400) per annum.

Sec. 2. The Superintendent of Public Instruction in each county in Texas having a population of not less than ten thousand, three hundred and sixty (10,360) and not more than ten thousand, three hundred and eighty (10,380), and in each county having a population of not less than ten thousand, three hundred and ninety-nine (10,399) and not more than ten thousand, four hundred and ninety-nine (10,499) inhabitants, according to the last preceding Federal Census, shall be allowed office and traveling expenses not exceeding Six Hundred Dollars (\$600) per annum, to be paid monthly out of the Available School Fund.

Sec. 3. The salary shall be paid monthly upon the order of the County School Trustees; provided that the month of September shall not be paid until the Superintendent of Public Instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruc-

tion showing that he has made all the reports required by him. Acts 1939, 46th Leg., Spec.L., p. 628.

Effective May 12, 1939.

Section 4 of the act of 1939 repeals all conflicting laws and parts of laws; section 5 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to fix the salary of the Superintendent of Public Instruction in each county in Texas having a population of not less than ten thousand, three hundred and sixty (10,360) and not more than ten thousand, three hundred and eighty (10,380), and in each county having a population of not less than ten thousand, three hundred and ninety-

nine (10,399) and not more than ten thousand, four hundred and ninety-nine (10,499) inhabitants, according to the last preceding Federal Census; providing for the payment of such salary from the Available School Fund of such county; providing for payment of salaries in monthly installments; providing certain salary shall not be paid until certain reports have been made; providing for office and traveling expenses to be paid out of the Available School Fund; repealing all laws or parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 628.

**Art. 2700d—36. Office and traveling expenses in counties of 24,578 to 24,580 and counties of 64,400 to 64,500**

In counties having a population of not less than twenty-four thousand, five hundred and seventy-eight (24,578) and not more than twenty-four thousand, five hundred and eighty (24,580), and in counties having a population of not less than sixty-four thousand, four hundred (64,400) and not more than sixty-four thousand, five hundred (64,500), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars (\$600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. Acts 1939, 46th Leg., Spec. L., p. 655, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the amount that may

be allowed by County Boards of Trustees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in certain counties according to the last preceding Federal Census; repealing all laws and parts of laws, General or Special, in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 655.

**Art. 2700d—37. County superintendent—Salary and expenses—Compensation of school trustees—Counties of 13,450 to 13,600 and 19,950 to 20,100 population**

In counties with a population according to the last preceding Federal Census of not less than thirteen thousand, four hundred and fifty (13,450) and not more than thirteen thousand, six hundred (13,600) and of not less than nineteen thousand, nine hundred and fifty (19,950) nor more than twenty thousand, one hundred (20,100), the salary of the county superintendent of public instruction shall be fixed by the Commissioners Court at not less than Eighteen Hundred Dollars (\$1800), nor more than Twenty-two Hundred Dollars (\$2200) per annum, and office and travelling expenses not exceeding Four Hundred Dollars (\$400) per annum may be allowed, when necessarily incurred by the superintendent in the discharge of the duties of the office, out of the State and county available school funds, provided further, that the Commissioners Court may expend from the general fund of the county not exceeding

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Two Hundred Dollars (\$200) per annum for the purpose of supplementing the office expenses of the county superintendent of public instruction. The compensation of each county school trustee in such counties shall be Five Dollars (\$5) per day, but not more than Sixty Dollars (\$60) shall be paid any trustee in any one year, payment thereof to be made in the manner provided by existing law. Acts 1939, 46th Leg., Spec.L., p. 629, § 1.

Effective July 5, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act fixing and providing for the payment of the salary and travelling and office expenses of the county superintendent of public instruction in counties with a population of not less than thirteen thousand,

four hundred and fifty (13,450) nor more than thirteen thousand, six hundred (13,600) and not less than nineteen thousand, nine hundred and fifty (19,950) nor more than twenty thousand, one hundred (20,100) according to the preceding Federal Census; and fixing and providing for payment of compensation of county school trustees in such counties; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 629.

**Art. 2700d—38. Salaries in counties of 34,600 to 34,700 and counties of 13,800 to 13,900**

Section 1. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than thirty-four thousand, six hundred (34,600) and not more than thirty-four thousand, seven hundred (34,700), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be set by the County Board of Trustees at an amount not to exceed Thirty-six Hundred Dollars (\$3600) per annum and not less than Twenty-eight Hundred Dollars (\$2800) per annum to be paid in accordance with and in the manner as provided by a General Law governing the maintenance of the office of County Superintendent of Public Instruction.

Sec. 1a. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than thirteen thousand, eight hundred (13,800) and not more than thirteen thousand, nine hundred (13,900), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be set by the County Board of Trustees at an amount not to exceed Twenty-two Hundred and Fifty Dollars (\$2250) and not less than Eighteen Hundred Dollars (\$1800) and traveling and other expenses as now allowed by General Law to be paid in accordance with and in the manner as provided by the General Law governing the maintenance of the office of County Superintendent of Public Instruction. Acts 1939, 46th Leg., Spec.L., p. 641.

Effective June 1, 1939.

Section 2 of the act of 1939 reads as follows: "All laws and parts of laws either here referred to by Article, Title, or Number, General or Special, in conflict herewith are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the General Law on this subject, but where not otherwise modified hereby such General Laws are made applicable."

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for more adequate and equitable salary for County Superintendents of Public Instruction in all those counties of Texas coming within the brackets and population figures herein, specifically in all those counties having a population of not less than thirty-four thousand, six hundred (34,600) and not more than thirty-four thousand, seven hundred (34,700) and in all counties having a population of not less than thirteen thousand, eight hundred (13,800) and not more than thirteen thousand, nine hundred (13,900), according to the last preceding Federal Census; modifying all laws or parts of laws in conflict herewith; making the Act cumulative of the General Law; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 641.

Art. 2700d—39. Salaries in counties of 77,000—77,600; 51,770—51,800; 12,190—12,200; 13,400—13,500; 27,500—27,600

From and after the passage of this Act in all counties of the State of Texas which have a population of not less than seventy-seven thousand (77,000) and not more than seventy-seven thousand, six hundred (77,600), and in all counties of the State of Texas which have a population of not less than fifty-one thousand, seven hundred and seventy (51,770) and not more than fifty-one thousand, eight hundred (51,800), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Thirty-six Hundred Dollars (\$3600) per annum; and in all counties of the State of Texas which have a population of not less than twelve thousand, one hundred and ninety (12,190) and not more than twelve thousand, two hundred (12,200), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Three Thousand Dollars (\$3,000) per annum; and in all counties of the State of Texas which have a population of not less than thirteen thousand, four hundred (13,400) and not more than thirteen thousand, five hundred (13,500), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Twenty-eight Hundred Dollars (\$2800) per annum; and in all counties of the State of Texas which have a population of not less than twenty-seven thousand, five hundred (27,500) and not more than twenty-seven thousand, six hundred (27,600), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Twenty-four Hundred Dollars (\$2400) per annum, to be paid in accordance with and in the manner as provided by the general law governing the maintenance of the office of County Superintendent, as provided in Article 2700, Revised Civil Statutes, 1925. Acts 1939, 46th Leg., Spec. L., p. 648, § 1.

Effective June 1, 1939.

Section 2 of the act of 1939 reads as follows: "All laws and parts of laws, whether here referred to by Article, Title, or Number or not, General or Special, in conflict herewith, are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the general law on the subject, and where not otherwise modified hereby such general laws are made applicable."

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing for a more adequate and equitable salary for County Superintendents of Public Instruction in all of those counties of Texas, coming within the brackets and population figures herein, spe-

cifically, in all those counties having not less than seventy-seven thousand (77,000) and not more than seventy-seven thousand, six hundred (77,600); and in all those counties having not less than fifty-one thousand, seven hundred and seventy (51,770) and not more than fifty-one thousand, eight hundred (51,800); and in all those counties having not less than twelve thousand, one hundred and ninety (12,190) and not more than twelve thousand, two hundred (12,200); and in all counties having not less than thirteen thousand, four hundred (13,400) and not more than thirteen thousand, five hundred (13,500); and in all counties having not less than twenty-seven thousand, five hundred (27,500) and not more than twenty-seven thousand, six hundred (27,600), according to the last preceding Federal Census; modifying all laws or parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 648.

Art. 2700d—40. County superintendent—Salaries—Counties of 23,620 to 23,800 and 12,460 to 12,780 population

Section 1. That from and after the effective date of this Act, the salaries of county superintendents of public instruction in all counties in this State having a population of not less than twenty-three thousand, six hundred and twenty (23,620) nor more than twenty-three thousand,

eight hundred (23,800), according to the last Federal Census, shall be in a sum not less than Twenty-two Hundred Dollars (\$2200) and not more than Three Thousand Dollars (\$3,000). The salaries of county superintendents of public instruction in all counties in this State having a population of not less than twelve thousand, four hundred and sixty (12,460) and not more than twelve thousand, seven hundred and eighty (12,780), according to the last preceding Federal Census, shall be in a sum not less than Eighteen Hundred Dollars (\$1800) and not more than Twenty-four Hundred Dollars (\$2400).

Sec. 2. In making the annual per capita apportionments in the schools of the counties coming within the provisions of this Act, the county school trustees shall provide for the payment of the salaries hereinabove named, to be paid monthly upon the order of the county school trustees, that is to say, the annual salaries shall be divided by twelve (12) and the amount determined by such division shall be paid monthly to such superintendents. Acts 1939, 46th Leg., Spec.L., p. 638.

Effective June 30, 1939.

Section 3 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act fixing the salaries of superintendents of public instruction in each county in Texas having a population of not less than twenty-three thousand, six hundred and twenty (23,620) nor more than twenty-three

thousand, eight hundred (23,800), and in all counties having a population of not less than twelve thousand, four hundred and sixty (12,460) nor more than twelve thousand, seven hundred and eighty (12,780), according to the last Federal Census; providing mode and manner of paying such salaries; repealing all laws and parts of laws in conflict herewith to the extent of the conflict only; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 638.

### 3. RURAL SCHOOL SUPERVISOR

#### Art. 2701d. Rural supervisor and salary in counties having population of 1,100 to 41,500

Counties of 5,650-5,675

Acts 1939, 46th Leg., Spec.L., p. 716 reads as follows:

"Section 1. That the county board of school trustees in counties having a population of not less than five thousand, six hundred and fifty (5,650) nor more than five thousand, six hundred and seventy-five (5,675) according to the last preceding Federal Census, may employ, upon the recommendation of the county superintendent, a rural school music supervisor to plan, outline, supervise, and teach music in the rural schools which are under the supervision and administration of the county superintendent of public instruction, said supervisor at all times to work in cooperation with and under the supervision of the county superintendent of public instruction. Such supervisor must have evidence of proficiency in public school music and be able to direct same. Other qualifications to be set up by county superintendent.

"Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class-work in music by teaching demonstration lessons for them, suggesting methods of presenting the work and aiding in every

possible way to improve classroom instruction in music. The supervisor, in cooperation with the county superintendent, may call meetings of the teachers of the county when deemed necessary for the purpose of discussing with them their problems, and it shall be the duty of said teachers to attend such meetings whenever called. Said supervisor, when not visiting schools, shall render assistance in the office of the county superintendent of whatever nature may be necessary if demanded by the county superintendent.

"Sec. 3. The removal of such supervisor and the termination of his or her services shall at all times be under the control of the board of county school trustees acting on the recommendation of the county superintendent of said county.

"Sec. 4. The salary of such rural school music supervisor shall be determined by the board of county school trustees and the county superintendent; provided the total salary of said supervisor shall not exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum, the salary of said supervisor to be allowed each year out of the county available fund."

Filed without Governor's signature May 19, 1939.

## Counties of 29,400-29,500

Acts 1939, 46th Leg., Spec.L., p. 719, effective May 17, 1939, reads as follows:

"Section 1. That the County Board of School Trustees in counties having a population of not less than twenty-nine thousand, four hundred (29,400) nor more than twenty-nine thousand, five hundred (29,500), according to the last preceding Federal Census, may employ, upon the recommendation of the County Superintendent, a rural school music supervisor to plan, outline, supervise, and teach music in the rural schools which are under the supervision and administration of the County Superintendent of Public Instruction, said supervisor at all times to work in cooperation with and under the supervision of the County Superintendent of Public Instruction. Such supervisor must have evidence of proficiency in public school music and be able to direct same. Other qualifications to be set up by County Superintendent.

"Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their classwork in music by teaching demonstration lessons for them, suggesting methods of presenting the work and aiding in every possible way to improve classroom instruction in music.

The supervisor, in cooperation with the County Superintendent, may call meetings of the teachers of the county when deemed necessary for the purpose of discussing with them their problems, and it shall be the duty of said teachers to attend such meetings whenever called. Said supervisor, when not visiting schools, shall render assistance in the office of the County Superintendent of whatever nature may be necessary if demanded by the County Superintendent.

"Sec. 3. The removal of such supervisor and the termination of his or her services shall at all times be under the control of the Board of County School Trustees acting on the recommendation of the County Superintendent of said county, and in no instance shall the services of said supervisor be terminated unless upon the recommendation of the County Superintendent of said county.

"Sec. 4. The salary of such rural school music supervisor shall be determined by the Board of County School Trustees and the County Superintendent; provided the total salary of said supervisor shall not exceed One Thousand, Three Hundred and Fifty Dollars (\$1,350) per annum, the salary of said supervisor to be allowed each year out of the County Available Fund."

## [Art. 2701d—3. Supervisor's salary and duties in other counties]

## Counties of 29,600-30,000

Acts 1937, 45th Leg., p. 75, ch. 45, reads as follows:

"Section 1. That the County Board of School Trustees in cooperation with the County Superintendent in counties having a population of 29,600 to 30,000 as shown by the last Federal Census, and a scholastic population of 9,500 to 10,000 as shown by the last scholastic census, may employ one or more Rural School Supervisors to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the County. Such supervisor shall be elected at a regular or a called meeting of the County Board of School Trustees for a term of not less than nine months nor more than two years; provided such supervisor may be subject for reelection as long as the work is satisfactory.

"Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons, by suggesting methods of presenting the work, and by aiding them in any way possible.

"Sec. 3. The supervisor, in cooperation with the County Superintendent, may call meetings of the teachers when deemed necessary for the purpose of discussing their work with them and it shall be the duty of such teachers to attend all such meetings whenever possible.

"Sec. 4. The Rural School Supervisor shall have had at least four years' training in a first class college or university with special training for such supervision and

shall be the holder of a Permanent First Class Certificate issued by the State Department of Education of Texas; shall have had at least five years' teaching experience in the primary and intermediate grades of rural schools; shall attend a first class college or university at least one term every three years, such training shall include at least one course in Rural School Supervision, and failure to comply with this last clause shall disqualify from future supervisory work.

"Sec. 5. The salary of such supervisor shall be fixed by the County Board of School Trustees and the County Superintendent, provided that the annual salary of the supervisor, including the office and traveling expenses, shall not exceed Two Thousand (\$2,000.00) Dollars, and said salary or salaries are to be paid out of the County Administration Fund."

Effective March 16, 1937.

## Counties of 64,351-64,451

Acts 1937, 45th Leg., p. 86, ch. 50, reads as follows:

"Section 1. That the county board of school trustees in counties having a population of not less than 64,351 nor more than 64,451, according to the last Federal Census, and a scholastic population of at least 14,067, as shown by the scholastic report of the preceding school year, may employ upon the recommendation of the county superintendent a rural school supervisor or supervisors to plan, outline and supervise the work in the primary and in-



intermediate grades of the rural schools of the county.

"Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and assist the teachers with their class work by suggesting methods of presenting the work by giving demonstration lessons for the teachers and by aiding them in any other manner possible. Said supervisor shall have authority to call meetings of the teachers when deemed necessary, and it shall be the duty of the teachers to attend all such meetings called by the supervisor, whenever possible.

"Sec. 3. The supervisor employed under the provisions of this Act must have had at least five years experience as a teacher or supervisor of primary or intermediate work. Said supervisor must also have a degree obtained from a reputable college or university and must be the holder of a teacher's permanent state certificate.

"Sec. 4. The salary of the rural school supervisor under the terms of this Act shall be determined by the county board of school trustees; provided said salary shall not exceed Eighteen Hundred (\$1,800.00) Dollars for any one year. It is further provided that the salary of said supervisor shall be paid from the county school administration fund."

Effective March 16, 1937.

#### Cities of 290,000-320,000

Acts 1937, 45th Leg., p. 215, ch. 116, relating to cities of 290,000 to 320,000 reads as follows:

"Section 1. That the County Board of School Trustees, in conjunction with the County Superintendent, in counties having a population of not less than two hundred and ninety thousand (290,000) nor more than three hundred and twenty thousand (320,000), according to the last preceding Federal Census, may employ rural school supervisors, not to exceed two (2), to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of such counties. Each candidate for supervisor must have a college degree and be required to present other appropriate evidence of proficiency in rural school supervision.

"Sec. 2. It shall be the duty of such supervisor or supervisors to visit the schools of the county and help the teachers with their class work, by teaching demonstration lessons for them, suggesting methods of presenting the work and aiding them in any way possible.

"Sec. 3. The supervisors, when authorized by the County Superintendent, may call meetings of the teachers when deemed necessary for the purpose of discussing their work with them, and it shall be the duty of such teachers to attend all such meetings, whenever possible.

"Sec. 4. The salaries of such rural supervisors shall be determined by the County Board of School Trustees, providing that the total salary paid to any such

supervisor shall not exceed Two Thousand, Two Hundred Dollars (\$2,200) for any one year, inclusive of traveling expenses. The said salaries shall be paid out of the State Available Funds apportioned to the common school districts of said county each scholastic year by a per capita assessment for that purpose, levied by the County School Board not later than September 1st of each scholastic year, provided that the payment of such assessment may be made in two (2) equal installments, the first on or before October 1st, and the second on or before March 1st of each successive school year.

"Sec. 5. The County Board of School Trustees shall have the power to discontinue the office of rural school supervisor at any time such board may consider the same desirable.

"Sec. 6. The employment of a rural supervisor under the terms of this Act shall exempt the County Superintendent from holding Teachers Institute for rural teachers and teachers of independent districts of the county and shall exempt the teachers from attendance upon a Teachers Institute as provided in Article 2691, Revised Civil Statutes of Texas, 1925, and as amended by the Fortieth Legislature."

Effective April 7, 1937.

#### Counties of 2,850-2,875

Acts 1939, 46th Leg., Spec.L., p. 709, effective April 25, 1939, relating to counties of 2,850 to 2,875 population, reads as follows:

"Section 1. That the County Board of School Trustees in all counties having a population of not less than two thousand eight hundred fifty (2,850) and not more than two thousand eight hundred seventy-five (2,875) inhabitants according to the last preceding Federal Census, may employ rural school supervisor for such counties to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county.

"Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them; suggesting methods of prescribing the work and aiding them in any other ways possible.

"Sec. 3. The supervisor may call meetings of the teachers, when deemed necessary, either by the supervisor or the County Board, for the purpose of discussing their work with them, and it shall be the duties of the teachers to attend such meetings whenever possible.

"Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed Nine Hundred (\$900.00) Dollars. Said salary shall be paid out of the local or available funds of the districts in proportion to the weekly salary, or salaries, of the teachers of the districts; provided said County

Board of School Trustees shall have the power to discontinue the office of rural school supervisor at any time, when it is clearly shown that such rural school supervisor is not a public necessity and his services are not commensurate with the salary received.

"Sec. 5. The employment of rural school supervisors, under the terms of this Act shall exempt the County Superintendent from holding a Teachers' Institute for rural teachers, including teachers of independent districts of fewer than five hundred (500) scholastics, and exempt the rural teachers of the County from attendance upon a Teachers' Institute as provided for in Article 2891, Revised Statutes of 1925, and as amended by the 40th Legislature.

"Sec. 6. It is hereby declared that if any clause, phrase, provision or section of this bill should be invalid or unconstitutional, that the Legislature would have nevertheless passed the remaining portions of said bill without including the phrase, clause, provision or section so declared invalid or unconstitutional."

#### Counties of 53,930-53,940

Acts 1939, 46th Leg., Spec.L., p. 712, effective June 5, 1939, reads as follows:

"Section 1. That from and after the effective date of this Act, the County Board of School Trustees in all counties having a population of not less than fifty-three thousand, nine hundred and thirty (53,930), and not more than fifty-three thousand, nine hundred and forty (53,940), according to the last Federal Census, may, and they shall, have the authority to employ a rural school supervisor whose duty it shall be to plan, outline, and supervise the primary grades of the rural schools of such counties, and shall meet with and advise with the County Board of Education when requested so to do, looking to the advancement and promotion of the school interests in such counties, and especially to supervise and plan the procedure and teaching of visual education.

"The salary of school supervisors coming under the provisions of this Act shall be

not exceeding Eighteen Hundred Dollars (\$1800) per annum. Said salary to be paid in ten (10) equal monthly installments, and to be paid out of the county available school funds, in the same mode and manner and under the same restrictions and requirements as is now provided by law for the payment of county school superintendents in such counties.

"The rural school supervisor herein provided for shall, in addition to the salary hereinabove stipulated, be paid annually not exceeding the sum of Seven Hundred Dollars (\$700) for traveling expenses and film rentals and such other expenses necessarily incurred in performing his or her duties. Such traveling expenses are to be paid only on itemized sworn accounts, presented at the same time he or she presents his or her salary claim; such expenses to be paid out of the same funds and in the same mode and manner as such expenses are now paid for county superintendents.

"It being the purpose of this Act to create a more unified and co-ordinated system of public rural school supervision, and to aid and instill into the minds of students of the rural schools a broader vision and outlook for the future than would be possible without such aid and supervision.

"Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and to advise with and help the teachers with their class work, by teaching demonstration lessons for them and by suggesting means and methods for presenting the work, and by aiding them in any way possible; especially by aiding and assisting by the mode and manner of visual demonstrations through the use of films and pictures to bring to the child mind an actual, vivid picture of historical events and other proper subjects of education in the mode and manner as to make the impression binding, instructive, and lasting. Provided, that only films for educational purposes shall be shown in said schools and that they shall not be shown for commercial purposes and no admission charge or charges shall be made to such showing or exhibition."

#### Art. 2701e—1. Rural school music supervisor in counties of 16,670 to 17,060 and 9,300 to 9,405 population

Section 1. That the County Board of School Trustees in counties having a population of not less than sixteen thousand, six hundred and seventy (16,670) nor more than seventeen thousand and sixty (17,060) and all counties having a population of not more than nine thousand, four hundred and five (9,405) and not less than nine thousand, three hundred (9,300), according to the last preceding Federal Census, may employ, upon the recommendation of the County Superintendent, a rural school music supervisor to plan, outline, supervise, and teach music in the rural schools which are under the supervision and administration of the County Superintendent of Public Instruction, said supervisor at all times to work in cooperation with and under the supervision of the County Superintendent of Public Instruction. Such supervisor must

have evidence of proficiency in public school music and be able to direct same. Other qualifications to be set up by County Superintendent.

Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their classwork, in music by teaching demonstration lessons for them, suggesting methods of presenting the work and aiding in every possible way to improve classroom instruction in music. The supervisor, in cooperation with the County Superintendent, may call meetings of the teachers of the county when deemed necessary for the purpose of discussing with them their problems, and it shall be the duty of said teachers to attend such meetings whenever called. Said supervisor, when not visiting schools, shall render assistance in the office of the County Superintendent of whatever nature may be necessary if demanded by the County Superintendent.

Sec. 3. The removal of such supervisor and the termination of his or her services shall at all times be under the control of the Board of County School Trustees acting on the recommendation of the County Superintendent of said county.

Sec. 4. The salary of such rural school music supervisor shall be determined by the Board of County School Trustees and the County Superintendent; provided the total salary of said supervisor shall not exceed One Thousand, Five Hundred Dollars (\$1,500) per annum, the salary of said supervisor to be allowed each year out of the County Available Fund. Acts 1939, 46th Leg., Spec.L., p. 718.

Effective 90 days after June 21, 1939, date of adjournment.

Section 5 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for a rural school music supervisor in certain counties; prescribing the duties of said supervisor; pre-

scribing the method of employing the supervisor; providing for removal of such supervisor by the County Board of School Trustees on recommendation of the County Superintendent; prescribing manner of fixing and paying salary; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 718.

## CHAPTER TWELVE—COUNTY UNIT SYSTEM

Art.	Validation of prior actions [New].	Art.	Compensation of members of board of county school trustees in counties of 8,470 to 8,480 population.
2740f—1.	Validation of prior actions [New].	2740h.	Compensation of members of board of county school trustees in counties of 8,470 to 8,480 population.
2740f—2.	County unit system in counties of 5,600 to 5,750 [New].		

### Art. 2740a. Supervision of schools in counties of more than 1100 square miles

Section 1. The general management, supervision, and control of the public free schools of counties with an area of more than eleven hundred (1,100) square miles and a population of not less than forty-two thousand (42,000) nor more than fifty-two thousand (52,000) according to the last preceding Federal Census, shall be vested in a County Board of Education. The County Board of Education shall be composed of five members to be elected at the regular school trustee election on the first Saturday in April of each year, one of whom shall be elected from each of the Commissioners' precincts and one from the county at large, by the qualified voters of the common school districts and of the independent school districts having five hundred (500) scholastics or less. The member at large shall serve as president of the Board. At the meeting following the first election the lengths of the terms of office shall be determined by lot and one elected each year thereafter for a term of five years.

Any vacancy occurring on said Board shall be filled by an election ordered by the County Judge. Said election shall be governed by the general laws of this State for elections. As amended Acts 1939, 46th Leg., Spec.L., p. 693, § 1.

Effective May 15, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

#### Art. 2740f. County wide Maintenance Tax

Section 1. This Act is applicable to all counties having an assessed valuation of taxable property according to the last approved tax rolls of not less than Twenty Million (\$20,000,000.00) Dollars and a population according to the latest Federal Census, of not more than three persons per square mile. Any county coming within the terms of this Act shall have a County Unit System of education to the extent specified in this Act. For the purpose of levying, assessing, and collecting a School Maintenance Tax and for such further administrative functions as are set forth herein, the territory of each of such counties is hereby created into a school district, hereinafter described as the county-wide district, the taxing power to be exercised as hereinafter provided. There shall be exercised in and for the entire territory of each of such counties, to the extent in this Act prescribed, the taxing power conferred on school districts by Article 7, Section 3 of the Constitution but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided. Whenever a petition is presented to the County Judge of any such county, signed by at least one hundred qualified property taxpaying voters residing therein, asking that an election be ordered for the purpose of determining whether or not a Maintenance Tax shall be levied, assessed and collected on all taxable property within said county for the maintenance of public schools therein, not exceeding Ten (10¢) Cents on the One Hundred (\$100.00) Dollars of assessed valuation of taxable property, it shall be the duty of the County Judge, immediately, to order an election to be held within said county to determine said question. Notice of said election shall be given by publishing a copy of the election order in a newspaper of general circulation in said county once each week for at least two weeks, the date of the first publication to be not less than twenty days prior to the date fixed for holding said election. Further notice shall be given by the posting of a copy of said election notice within the boundaries of each Independent and each Common School District, and one copy of said notice shall be posted at the court house door. Said notice shall be posted at least twenty days prior to the date fixed for said election. Except as otherwise provided herein, the manner of holding said election shall be controlled by the general election laws of the State, and only resident, qualified property taxpaying voters shall be permitted to vote at said election. Said election shall be held at the usual voting places in the several election precincts of such county. Said election returns shall be made and delivered to the County Judge and shall be canvassed by the Commissioners' Court of such County at its next regular or special meeting following said election. A majority vote of those voting at said election shall be sufficient to carry said election. The result of said election shall be recorded in the minutes of the Commissioners' Court and certified by the County Clerk and Ex-Officio Clerk of the Commissioners'

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Court to the County Superintendent or Ex-Officio Superintendent of said County. As amended Acts 1937, 45th Leg., p. 90, ch. 54, § 1.

Effective March 18, 1937.

Section 3 of the amendatory act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

Sec. 11. In the event the county-wide Maintenance Tax is adopted in any county affected by this Act, the Commissioners' Court shall thereafter have the power to levy such tax for each year until and including taxes for the year 1942 which, under present laws, will be due October 1, 1942, and delinquent after January 31, 1943. Powers acquired under this Act shall remain effective until all taxes levied during such period of time shall have been collected; but no further county-wide Maintenance Tax shall be levied thereafter. On and after January 31, 1943, each common and independent school district in such county shall revert to its original status for taxing, administrative, and all other purposes. [Acts 1933, 43rd Leg., 1st C.S., p. 12, ch. 7, as amended Acts 1937, 45th Leg., p. 90, ch. 54, § 1.]

Amendment of 1937, effective March 18, 1937. Emergency section. See note under section 1, ante.

#### Art. 2740f—1. Validation of prior actions

All actions heretofore taken by the Commissioners' Court, the County Officials, or the officials of school districts located in any such county, or in behalf of any such county affected by this Act and all elections heretofore held in any such county for the purpose of acquiring and obtaining the advantages of said Act, and all county-wide school taxes heretofore levied by virtue of said Act are hereby expressly authorized and validated. Acts 1937, 45th Leg., p. 90, ch. 54, § 2.

Effective March 18, 1937.

Emergency section. See note under section 2740f, § 1, ante.

#### Art. 2740f—2. County unit system in counties of 5,600 to 5,750

Section 1. Any county in this State containing a population of not less than five thousand, six hundred (5,600) nor more than five thousand, seven hundred and fifty (5,750) according to the last preceding Federal Census shall have a county unit system of education to the extent specified in this Act, and for the purpose of levying, assessing, and collecting a school equalization tax, and for such other administrative functions as are herein set forth; the territory of each of such counties may be created into a county-wide school district in the manner hereinafter provided and may exercise the taxing power as hereinafter provided. There shall be exercised in and for the entire territory of each of such counties, to the extent in this Act prescribed, the taxing power conferred on school districts by Article 7, Section 3, of the Constitution, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Sec. 2. On the petition of as many as one hundred (100) legally qualified voters of any county coming under the provisions of this Act praying for the formation of such county-wide school district, the County Judge shall, within thirty (30) days, order an election to be held throughout the county. The County Judge shall give notice of the date of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election, and all

legally qualified voters shall be allowed to vote at said election. The form of ballot shall be substantially as follows:

“For Equalization District”

“Against Equalization District”

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of votes cast shall favor the formation of such district, the Court shall declare the result thereof and declare the county-wide school equalization district duly and legally created and the provisions of this Act duly adopted.

Sec. 3. The general management, supervision, and control of the public schools and of the educational interests of each county adopting the provisions of this law shall be vested in the County Board of School Trustees, except as otherwise provided by law, and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the Board of Trustees for such county-wide district. Any such county-wide school equalization district formed in the manner hereinabove provided may levy and collect annually on all taxable property in the county an equalization tax not to exceed Twenty (20) Cents on the One Hundred Dollars (\$100) valuation of property situated in said county, and the money derived from such tax shall be known as an equalization fund for the support of the public schools of the county, which fund shall be distributed to the school districts of the county as provided herein.

Sec. 4. On the petition of as many as one hundred (100) legally qualified property taxpaying voters of any county which shall have adopted the provisions of this Act, praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days from the date of such order. The County Judge shall give notice of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election. Only legally qualified property taxpaying voters, who own property in the county and who have duly rendered the same for taxation, shall be allowed to vote in said election. The form of ballot is substantially as follows:

“For County Tax”

“Against County Tax”

The Commissioners Court shall, at its next regular or special meeting, canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the results and certify same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of three (3) years from the date of the election at which said tax was adopted.

Sec. 5. In the counties adopting the provisions of this law, the County Tax Assessor shall assess all of the taxable property in the county at the same rate of valuation as it is assessed for State and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as other State and county taxes are collected. The Tax Collector shall deposit the money collected from said tax in a separate fund to be known as the County Equalization Fund for the support of the public schools of the county. He shall have the same authority, and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall, on or about the 10th of each month, make a report to the County Board of School Trustees and to the County Superintendent of schools, showing all moneys collected by

him during the last month by said tax, and shall each month place such funds in the Equalization Fund. The County Superintendent shall keep a record, both received and paid out, of all money from said Fund. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts; however, no part of the moneys realized from said county-wide maintenance tax shall be used to pay any present or future bond issues or interest thereon, and the moneys received and held by independent school districts shall be protected in accordance with the existing depository laws. And the Tax Collector shall place to the credit of the common school districts in such county such moneys as are apportioned to them, which shall be protected as provided by the existing depository laws.

Sec. 6. The Tax Collector, before entering upon the duties of his office, shall enter into a bond, with two (2) or more good and sufficient sureties, or surety bond, for the protection of said Equalization Fund, said bond to be made payable to the County Board of School Trustees, and to be made in a sum not less than double the amount of money which he may have in his possession of said Fund at any time. The amount of said bond shall be fixed by the County Board of School Trustees. The County Board shall require a similar bond of any and all other persons or corporations in whose possession such Funds may be kept.

Sec. 7. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent districts of the county on a per capita basis according to the number of scholastic pupils shown by the last preceding official scholastic census, and county-line districts shall be eligible to receive such per capita apportionment based upon the number of scholastic pupils residing in the county of such equalization district, as shown by the latest official scholastic census of such district. The County Board of School Trustees shall issue warrants against such Equalization Fund to the school district trustees on a per capita basis of scholastic pupils in each district; provided that the County Board may, from time to time, as the money is collected, issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis of scholastic pupils in the respective districts.

Sec. 8. The several independent school districts and common school districts in such county shall continue to have authority to levy, assess, and collect the maintenance taxes theretofore authorized by the property taxpayers in said respective districts. This law shall not affect the right and duty of said respective school districts to levy, assess, and collect taxes within their respective districts for the payment of principal and interest on bonded indebtedness of such districts. The respective districts shall continue to levy, assess, and collect taxes sufficient to pay principal of, and interest on their bonds. Provided, however, that nothing in this Act shall prevent the proper authorities from collecting and enforcing for the benefit of the respective districts, any maintenance taxes levied before this law becomes effective.

Sec. 9. This Act shall not have the effect of changing any duties imposed on or powers conferred on the trustees of any common or independent school districts situated in the counties covered by this Act, unless and except as expressly provided herein, it being the intention of this law that said respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector.

Sec. 10. In case any clause, sentence, paragraph, section, or part of this Act shall be held unconstitutional or void, then, and in that event, it shall not affect any other clause, sentence, paragraph, section, or part of this Act. All laws, or parts of laws, both general and special, in conflict with this Act are hereby repealed. Acts 1937, 45th Leg., p. 315, ch. 163.

Effective April 15, 1937.

Section 11 of this act declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act to permit any county containing a population not less than five thousand, six hundred (5,600) nor more than five thousand, seven hundred and fifty (5,750) according to the last preceding Federal Census to adopt by a majority vote of qualified voters of such county a county unit system to the extent provided in this Act; making provisions for the formation of a county-wide school district therein; making provision for holding election in each such county on the question of the adoption of the provisions of this Act; making provision for holding an election in each such county to determine whether an equalization tax not to exceed twenty (20) cents on the One Hundred Dollars

(\$100) valuation of property shall be levied and collected annually on all taxable property in the county, such tax to be distributed to the school districts of the county as herein provided; making provision for the assessment and collection of said equalization tax, and prescribing the duties of the County Tax Assessor and Collector and County Superintendent; prescribing the duties of the County Board of School Trustees with respect to such tax and the funds derived therefrom; providing that all rights, duties and powers of the several common and independent school districts in any such county shall remain undisturbed and shall not be affected, except as expressly provided in this Act; providing a saving clause; repealing all laws in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 315, ch. 163.]

**Art. 2740h. Compensation of members of board of county school trustees in counties of 8,470 to 8,480 population**

In all counties having a total population of not more than thirty thousand, nine hundred and twenty-five (30,925) and not less than thirty thousand, nine hundred and fifteen (30,915), according to the last preceding Federal Census, and at the same time in those counties having a scholastic population of not more than eight thousand, four hundred and eighty (8,480) and not less than eight thousand, four hundred and seventy (8,470), according to the latest scholastic census as contained in the Public School Directory of the State Department of Education, the salary of a member of a county board of school trustees shall be Five Dollars (\$5) per day, provided that not more than twelve (12) meetings shall be held in any fiscal year for which reimbursement is paid. Acts 1939, 46th Leg., Spec.L., p. 690, § 1.

Effective June 9, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing pay for county board members of certain counties, and limiting the number of sessions to be paid for; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 690.

**CHAPTER THIRTEEN—SCHOOL DISTRICTS**

**1. COMMON SCHOOL DISTRICTS**

Art.

2742e—1. Trustees may abolish or subdivide districts [New].

2742f—1. Elections as to transferring land from one school district to another validated [New].

Art.

2742n. Validating establishment, combination, alteration, etc., of independent or common school districts [New].

2744d. [New, repealed]

2744e. County wide districts in counties of 20,000 to 32,500 [New].



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

- Art.  
2744e—1. County-wide equalization districts in counties of 35,000 to 67,500 population [New].
- 2744e—2. County-wide equalization districts in counties of 2,775 to 2,850 population [New].
- 2745a. Residents of county line district qualified to vote for trustees through residing outside county managing district [New].
- 2750a. Contracts with principals, superintendents, and teachers; term; approval by County Superintendent [New].
2. INDEPENDENT DISTRICTS IN TOWNS
- 2761b. Exemption from county control of independent districts in counties of 11,000 to 11,021 population [New]
- 2764a. Elementary districts in grouped high school districts in certain counties authorized to create independent district [New].
- 2767g. Certain independent districts excepted from law as to creation and abolition of districts [New].
3. INDEPENDENT DISTRICTS IN CITIES
- 2777d. Term of office of school trustees in cities of 101,000 to 105,000 constituting independent district [New].
4. TAXES AND BONDS
- 2784c. Tax rate in certain counties having population of 130,000 to 150,000 [New].
- 2784d. Borrowing money additional power of districts of 39,495 to 39,500 population and having large percentage of delinquent taxes [New].
- 2786b. Assumption of bonded indebtedness by school districts when boundaries extended [New].
- 2787b. Serial coupon bonds [New].
- 2787c. Validating certain bonds [New].
- 2787d. Bonds of common school districts for transportation facilities in counties of 11,021 to 11,050 population [New].
- 2790a—1. Levies and assessments of ad valorem taxes validated [New].
- 2790a—2. New, Repealed.
- 2790a—3. Ad valorem tax levies and assessments validated in county line independent districts of 17,000 to 17,500 population [New].
- 2790a—4. Tax levy by independent districts having limitation upon rate less than one dollar [New].
- Art.  
2790d—1. Time warrants authorized in counties of 5,796 to 5,890 population to refund and extend indebtedness [New].
- 2790d—2. Refunding warrants of independent districts having population of 13,950 to 14,050 authorized [New].
- 2790d—3. Refunding warrants authorized and validated in county line independent districts located in three or more counties; 17,000 to 17,500 population; tax levy to pay warrants [New].
- 2790g. Tax rate in certain independent districts of 15,140 to 15,160 population; elections [New].
- 2790h. Independent districts in counties of 32,350 to 32,300 population authorized to borrow money for construction of schools; interest bearing warrants authorized [New].
- 2790i. Time warrants of independent districts of 769 to 775 scholastics validated [New].
- 2790j. Refunding bonds authorized in certain independent districts containing city or town of 7,100 to 7,200 population [New]
- 2790k. Tax rate in independent districts in certain cities [New].
- 2792a. Assessment at fair market value or intrinsic value [New].
- 2802e—1. Construction and mortgaging of gymnasia, stadia, etc., by independent districts authorized; self-liquidating; proceedings validated [New].
- 2802f—1. Additional powers conferred on districts having large percentage of delinquent taxes; borrowing money; pledging taxes [New].
- 2802g. Tax rate in independent district including city of 13,700 to 13,800 [New].
- 2802h. Maximum tax rate in independent districts including city or town having certain population [New].
- 2802i. Tax rate in independent districts including city of 400 to 450 population in counties of 30,400 to 30,600 population [New]
- 2802i—1. Maximum tax rate in independent or independent consolidated districts including city or town of 4,130 to 4,180 population [New].
- 2802i—2. Maximum tax rate in independent or independent consolidated districts including city or town of 1,050 to 1,055 population [New].
- 2802i—3. Maximum tax rate in independent districts including city or town of 4,450 to 4,485 population [New].

- Art.  
2802i—4. Maximum tax rate in independent districts including city or town of 6,750 to 6,850 population [New].
- 2802i—5. Tax rate in independent districts in counties of 24,060 to 24,070, having scholastic population of 760 to 770; election [New].
- 2802i—6. Maximum maintenance and bond tax rate in independent districts in counties of 12,190 to 12,200 and including a town of not less than 2,000 [New].
- 2802i—7. Tax rate fixed in certain districts [New].
- 2802i—8. Maximum tax rate in certain independent school districts [New].
- 2802i—9. Maximum maintenance and bond tax rate; certain independent school districts of 51,750-52,000 [New].

#### 5. ADDITIONS AND CONSOLIDATIONS

- 2806b. Validation of county line independent school districts formed by consolidation with contiguous common school districts [New].

#### 6. DISTRICTS IN LARGE COUNTIES

- 2815g—1a. Provisions of act inapplicable to counties of over 290,000 and less than 320,000 [New].
- 2815g—10. Validation of consolidation of contiguous independent school districts [New].
- 2815g—11. Validating districts in counties of 98,000 to 100,000 [New].
- 2815g—12. Validation of all school districts, acts of trustees, bonds, etc. [New].
- 2815g—13. Validating elections for establishing, consolidating, abolishing, or changing independent or common districts [New].
- 2815g—14. Validation of school district bonds containing irregularity as to maturity date [New].

- Art.  
2815g—15. Validation of acts of trustees in creating, etc., school districts in counties not exceeding 11,400 population [New].
- 2815g—16. Validation of districts created by joining county line and contiguous districts [New].
- 2815g—17. Validation of election of trustees in independent districts [New].
- 2815g—18. Validation of independent district elections assuming indebtedness apportioned against districts [New].
- 2815g—19. Validation of consolidated independent districts of 13,500 to 15,500 population [New].
- 2815g—20. Validation of certain county line independent rural high school districts and acts of trustees [New].
- 2815g—21. Validating acts of trustees in ordering elections for establishing, combining, abolishing, or changing independent or common districts in counties of 22,570 to 22,600; bond elections validated [New].
- 2815g—22. Validating creation of certain county line districts [New].
- 2815g—23. Continuing certain districts [New].
- 2815g—24. Consolidating common school district to independent school district having scholastic population of 250-400 validated [New].

#### 7. JUNIOR COLLEGES

- 2815h—1. Validation of Junior College Districts [New].
- 2815h—2. Validation of independent school districts constituting Junior College Districts [New].
- 2815h—3. Independent districts in counties of 34,150 to 34,200 and 6,040 to 6,070 population authorized to establish junior colleges [New].

#### Art. 2742e—1. Trustees may abolish or subdivide districts

That from and after the passage of this Act, the County Board of School Trustees in any county in this State shall have authority and full power to abolish and/or subdivide any common school district, or other district coming under the jurisdiction of said County Board, having fewer than ten (10) resident scholastics within its boundaries, provided that no public school has been conducted in such district for a period of five (5) years immediately preceding such action by said County Board of School Trustees. The territory of any such school district so abolished or subdivided may be attached to any or all contiguous school districts or county line school districts in such manner as may be determined by said County Board. It is further provided that in the event such newly formed school district does not vote to assume the same, said County School Board shall make an adjustment of any out-

standing bonded indebtedness, if there be such, and provide for an equitable distribution of all district properties and/or moneys between the districts affected and the territory so divided, detached or added, taking into consideration the value of school properties and the taxable wealth of the districts affected and the territories so divided, detached or added, as the case may be. When said County Board shall have arrived at a satisfactory basis of such an adjustment, it shall have power to make such orders with reference thereto as shall be conclusive and binding upon the districts so affected; provided, however, that the trustee or any residents of the districts or territory so affected by the Act of the County Board of Trustees as authorized by this Act may appeal from the decision of the County Board to the District Court. Acts 1939, 46th Leg., p. 293, § 1.

Effective May 15, 1939.

Sec. 2 of the Act of 1939 provided: "The actions of all County Boards of Trustees heretofore taken to accomplish objects authorized by this Act are hereby expressly authorized and validated in like manner as if this law had been effective at the time of such actions; provided, however, that this Section shall not apply to any district the abolition or annexation of which is in issue in litigation at the time of the passage of this Act."

Section 3 repeals all conflicting laws and parts of laws; section 4 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act authorizing County Boards of School Trustees to abolish and/or subdivide common school districts having fewer than ten (10) scholastics and not having conducted a school for a period of five (5) years; providing that the territory of school districts so abolished or subdivided may be attached to contiguous districts in such manner as may be determined by the County Boards; providing for the adjustment of bonded indebtedness and the distribution of funds; validating actions of County Boards of Trustees heretofore taken to accomplish objects authorized by this Act; repealing all laws and parts of laws in conflict herewith, and declaring an emergency. Acts 1939, 46th Leg., p. 293.

**Art. 2742f. [Detaching territory from one school district and attaching to another]**

Acts of County Boards of School Trustees under Act of 1935, validated, see article 2742n, post.

**Art. 2742f—1. Elections as to transferring land from one school district to another validated**

That all elections heretofore held under the provisions of Chapter 339, Acts of the Regular Session of the Forty-fourth Legislature of Texas,<sup>1</sup> in any common school district located in any county in Texas having a population of not less than eight thousand two hundred fifty (8,250), and not more than eight thousand five hundred (8,500), according to the last preceding Federal Census, transferring land from such common school districts to other school districts, and/or assuming any bonded indebtedness of such districts be, and all such elections are hereby in all things ratified, validated and confirmed, and all acts of the official bodies of said counties, and all acts of the election officials holding said elections, are hereby in all things validated, ratified and confirmed; provided that this Act shall not affect any election which is now being contested in the courts of this State. Acts 1939, 46th Leg., Spec. L., p. 1020, § 1.

<sup>1</sup> Article 2742f.

Effective April 24, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act validating all elections heretofore held under the provisions of Chapter 339, Acts of the Regular Session of the Forty-fourth Legislature of Texas, in common

school districts located in any county having a population of not less than eight thousand two hundred fifty (8,250), and not more than eight thousand five hundred (8,500), according to the last preceding Federal Census transferring lands from one school district to another and/or assuming any bonded indebtedness of such districts; validating

all acts of the official bodies of said counties in calling said elections, and validating all acts of the election officials holding said elections; provided that this Act shall not affect any election which is now being contested in the courts of this State; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1020.

#### Art. 2742i. Validating school districts

Acts 1939, 46th Leg., Spec.L., p. 1032, effective June 13, 1939, validated the organization of certain school districts in counties

from 28,620 to 28,650 and counties from 12,460 to 12,480.

#### [Art. 2742k. Validation of districts]

Acts 1937, 45th Leg., p. 260, ch. 136, validating school districts in counties of 39,497 to 39,500 reads as follows:

"Section 1. That the actions of any County Board of Trustees in this State creating any common school district, are hereby in all things validated. The actions of said trustees with reference to the attachment of territory, the detachment of territory, or the annexation of any territory within the jurisdiction of said Board to any common or independent school district, are hereby in all things validated as though they had been duly and legally established in the first instance.

"Sec. 1a. This Act shall apply only to those counties having a population of thirty-nine thousand, four hundred and ninety-seven (39,497) to thirty-nine thousand, five hundred (39,500) according to the last preceding Federal Census and that no part of this Act shall affect any litigation of any district now pending.

"Sec. 1b. The Acts of the County Board of Trustees shall not be valid except those Acts that are passed by four-fifths majority of the Board itself."

Effective April 9, 1937.

#### [Art. 2742m. Abolition or subdivision of districts; adjustment of indebtedness]

Acts of County Boards of School Trustees under Act of 1935, validated, see article 2742n, post.

#### Art. 2742n. Validating establishment, combination, alteration, etc., of independent or common school districts

That all acts of County Boards of School Trustees in any County in this State in laying out and attempting to establish, combine, abolish or change any independent or common school districts in the county over which such County Board of School Trustees has jurisdiction under and by virtue of Chapter 339, Acts of the Regular Session of the Forty-fourth Legislature, 1935,<sup>1</sup> or under Chapter 151, Acts of the Regular Session of the Forty-fourth Legislature, 1935,<sup>2</sup> are hereby in all things ratified, confirmed and validated, and that all elections held in any County in this State for the purpose of laying out, establishing, combining, abolishing or changing any such independent or common school districts, are also in all things ratified, confirmed and validated; provided that this Act shall not validate any such acts of the County Boards of School Trustees in any County, nor any elections held in any such County, for the purpose of laying out, establishing, combining, abolishing or changing any such independent or common school districts in which there is now pending any contest or litigation. [Acts 1936, 44th Leg., 3rd C.S., p. 2093, ch. 502, § 1.]

<sup>1</sup> Article 2742f.

<sup>2</sup> Article 2742m.

Effective Oct. 31, 1936.

Section 2 of this Act declared an emergency and provided that Act should take effect from and after its passage.

#### Title of Act:

An Act ratifying, confirming and validating all acts of County Boards of Trustees in laying out or attempting to establish, combine, abolish or change any independent or common school districts, and all elec-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

tions held in any County in this State for the purpose of laying out, establishing, combining, abolishing or changing any such independent or common school districts under the provisions of Chapter 339, Acts of the Regular Session of the Forty-fourth

Legislature, 1935, or under Chapter 151, Acts of the Regular Session of the Forty-fourth Legislature, 1936; and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 2093, ch. 502.]

#### Art. 2743. County line districts

Acts 1939, 46th Leg., H.B. #1052, effective May 13, 1932, validated the subdivision of common county line school districts

partly situated in two counties, the supervision of said schools being located in counties from 30,010 to 30,030.

#### Art. 2744d. [Repealed by Acts 1937, 45th Leg., 1st C.S., p. 1810, ch. 31, § 1.]

Prior to its repeal this article was Acts 1937, 45th Leg., p. 262, ch. 138. Effective June 25, 1937.

#### Art. 2744e. County wide districts in counties of 20,000 to 32,500

Section 1. All counties in this State having a population of not more than thirty-two thousand, five hundred (\$2,500) nor less than twenty thousand (20,000), according to the last preceding Federal Census, and containing a valuation of Seventy-five Million Dollars (\$75,000,000) or more, are hereby created into county-wide equalization school districts, and each such county shall have the county unit system of education to the extent specified in this Act and may exercise the taxing power conferred on school districts by Article 7, Section 3 of the Constitution to the extent hereinafter provided but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Sec. 2. The general management, supervision, and control of the public schools and of the educational interests of such counties shall be vested in the County Board of School Trustees, except as otherwise provided by law and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the Board of Trustees for such county-wide equalization district. Any such county-wide school equalization district may levy and collect annually on all taxable property in the county an equalization tax not to exceed Twenty-five (25) Cents on the One Hundred Dollars (\$100) valuation of property situated in said county and the money derived from said tax shall be known as an equalization fund for the support of the public schools of the county, which funds shall be distributed to the school districts of the county as provided herein.

Sec. 3. On the petition of as many as one hundred (100) legally qualified taxpaying voters of any county, subject to the provisions of this Act praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days, nor less than twenty (20), from the date of such order. The County Judge shall give notice of such election by causing to be published a copy of the order of the election in some newspaper, published in the county once each week for three (3) consecutive weeks prior to the date of such election, the date of the first publication to be not less than twenty (20) days prior to the date fixed by the election. Only legally qualified property taxpaying voters who own property in the county and who have duly ren-

dered the same for taxation shall be allowed to vote in said election. The form of ballot shall be substantially as follows:

"For the county-wide equalization tax."

"Against the county-wide equalization tax."

The manner of holding said election shall be governed by the General Laws of the State of Texas regulating elections and shall be held at the regular polling places within the county with duly appointed election officers holding said election. The officers holding the election shall make returns thereof to the County Judge within ten (10) days after the same was held.

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the result and certify the same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of five (5) years from the date of the election at which said tax was adopted.

Sec. 4. In counties voting such equalization tax the County Tax Assessor shall assess all the taxable property in the county at the same rate of valuation as it is assessed for the State and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as State and county taxes are collected. The Tax Collector shall have the same authority and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall on or before the 10th of each month make a report to the County Board of School Trustees and to the County Superintendent of Schools showing all moneys collected by him during the last month by said tax. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Sec. 5. The County Superintendent shall be the Treasurer of the county-wide equalization district and shall keep an accurate record of all moneys received and paid out by such county-wide equalization district. The county depository shall be the depository for the county-wide equalization district and such depository shall enter into a bond of a like condition and amount as is prescribed by law for depositories of county funds. The Tax Collector shall on or before the 10th of each month deposit all moneys collected by him during the preceding month by said school equalization tax in the depository to the credit of the county-wide school equalization fund.

Sec. 6. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent school districts of the county on the same basis that the State per capita apportionment is distributed among said common and independent school districts. The County Board of School Trustees shall issue warrants to be signed by the president of said Board, attested by the secretary thereof, against such equalization fund to the School District Trustees on a per capita basis as is provided herein, provided, however, that the County Board shall from time to time as the money is collected issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis as provided herein.

Sec. 7. This Act shall not have the effect of changing any duties imposed on or powers conferred on the Trustees of any common or inde-

pendent school district, situated in the counties covered by this Act unless and except as expressly provided herein. It being the intention of this law that respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector, and distributed to the respective districts by the County Board of School Trustees.

Sec. 8. In the event any clause, sentence, paragraph, Section, or part of this Act shall be held unconstitutional or void, then and in that event it is hereby declared to be the legislative intent that all other clauses, sentences, paragraphs, Sections, and parts of this Act shall have full effect according to their purport and intent. All laws or parts of laws, both General and Special, in conflict with this Act are hereby repealed in so far and only in so far as they conflict with the provisions of this Act in its local application. Acts 1937, 45th Leg., p. 454, ch. 231.

Effective April 28, 1937.

Section 9 of this Act declared an emergency making it effective on and after its passage.

**Title of Act:**

An Act creating county-wide equalization school districts in all counties containing a population of not less than twenty thousand (20,000) nor more than thirty-two thousand, five hundred (32,500), according to the last preceding Federal Census, and containing a valuation of Seventy-five Million Dollars (\$75,000,000) or more; providing for the vesting of the general management, supervision, and control of the public schools and educational interests of such counties in the county board of school trustees and constituting such trustees as the Board of Trustees for such county-wide equalization districts; making provision for the levying of an equalization tax of not to exceed Twenty-five (25) Cents on One Hundred Dollars

(\$100) valuation of property situated within the county; providing for the holding of an election in each such county on the question of levying such equalization tax and providing for the assessment and collection of such taxes by the County Tax Collector, prescribing his duties and compensation; making provision to constitute the County Superintendent as Treasurer of the county-wide equalization district and prescribing his duties, designating the county depository as the depository for such district; prescribing the duties of the County Board of Trustees with respect to such tax and funds derived therefrom; providing that the Act shall not have the effect of changing any duties or powers imposed upon the Trustees of any common or independent school districts except as expressly provided in the Act; providing a saving clause; repealing all laws in conflict herewith; and declaring an emergency. Acts 1937, 45th Leg., p. 454, ch. 231.

**Art. 2744e—1. County-wide equalization districts in counties of 35,000 to 67,500 population**

Section 1. All counties in this State having a population of not more than thirty-five thousand (35,000) nor less than sixty-seven thousand, five hundred (67,500), according to the last preceding Federal Census, and containing a valuation of Seventy-five Million (\$75,000,000.00) Dollars, or more according to the last approved tax rolls for state and county purposes, are hereby created into county-wide equalization school districts, and each such county shall have the county unit system of education to the extent specified in this Act and may exercise the taxing power conferred on school district by Article 7, Section 3, of the Constitution to the extent hereinafter provided but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Sec. 2. The general management, supervision, and control of the public schools and of the educational interests of such counties shall be vested in the County Board of School Trustees, except as otherwise provided by law and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act.

and shall constitute the Board of Trustees for such county-wide equalization district. Any such county-wide school equalization district may levy and collect annually on all taxable property in the county an equalization tax not to exceed Twenty-five (25¢) Cents on the One Hundred (\$100.00) Dollars valuation of property situated in said county and the money derived from said tax shall be known as an equalization fund for the support of the public schools of the county, which funds shall be distributed to the school districts of the county as provided herein.

Sec. 3. On the petition of as many as one hundred (100) legally qualified taxpaying voters of any county, subject to the provisions of this Act praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days, nor less than twenty (20), from the date of such order. The County Judge shall give notice of such election by causing to be published a copy of the order of the election in some newspaper, published in the county once each week for three (3) consecutive weeks prior to the date of such election, the date of the first publication to be not less than twenty (20) days prior to the date fixed by the election. Only legally qualified property taxpaying voters who own property in the county and who have duly rendered the same for taxation shall be allowed to vote in said election. The form of ballot shall be substantially as follows:

“For the county-wide equalization tax”.

“Against the county-wide equalization tax”.

The manner of holding said election shall be governed by the General Laws of the State of Texas regulating elections and shall be held at the regular polling places within the county with duly appointed election officers holding said election. The officers holding the election shall make returns thereof to the County Judge within ten (10) days after the same was held.

The Commissioners' Court shall at its next regular meeting canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the result and certify the same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same.

Sec. 4. In counties voting such equalization tax the County Tax Assessor shall assess all the taxable property in the county at the same rate of valuation as it is assessed for the State and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as State and county taxes are collected. The Tax Collector shall have the same authority and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall on or before the 10th of each month make a report to the County Board of School Trustees and to the County Superintendent of Schools showing all moneys collected by him during the last month by said tax. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Sec. 5. The County Superintendent shall be the Treasurer of the county-wide equalization district and shall keep an accurate record of all moneys received and paid out by such county-wide equalization district. The county depository shall be the depository for the county-wide equalization district and such depository shall enter into a bond of a like condition and amount as is prescribed by law for depositories of county



funds. The Tax Collector shall on or before the 10th of each month deposit all moneys collected by him during the preceding month by said school equalization tax in the depository to the credit of the county-wide school equalization fund.

Sec. 6. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent school districts of the county on the same basis that the State per capita apportionment is distributed among said common and independent school districts. The County Board of School Trustees shall issue warrants to be signed by the president of said Board, attested by the Secretary thereof, against such equalization fund to the School District Trustees on a per capita basis as is provided herein, provided, however, that the County Board shall from time to time as the money is collected issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis as provided herein.

Sec. 7. This Act shall not have the effect of changing any duties imposed on or powers conferred on the Trustees of any common or independent school district, situated in the counties covered by this Act unless and except as expressly provided herein. It being the intention of this law that respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector, and distributed to the respective districts by the County Board of School Trustees.

Sec. 8. In the event any clause, sentence, paragraph, section, or part of the Act shall be held unconstitutional or void, then and in that event it is hereby declared to be the legislative intent that all other clauses, sentences, paragraphs, sections, and parts of this Act shall have full effect according to their purport and intent. All laws or parts of laws both General and Special, in conflict with this Act are hereby repealed in so far and only in so far as they conflict with the provisions of this Act in its local application. Acts 1939, 46th Leg., Spec.L., p. 677.

Effective 90 days after June 21, 1939, date of adjournment.

Section 9 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act creating county-wide equalization school districts in all counties containing a population of not less than thirty-five thousand (35,000) nor more than sixty-seven thousand five hundred (67,500) according to the last preceding Federal Census, and containing a valuation of Seventy-five Million (\$75,000,000.00) Dollars, or more, according to the last approved tax rolls for state and county purposes; providing for the vesting of the general management, supervision, and control of the public schools and educational interests of such counties in the county board of school trustees and constituting such trustees as the Board of Trustees for such county-wide equalization districts; making provision for the levying of an equalization tax of not to

exceed Twenty-five (25¢) Cents on One Hundred (\$100.00) Dollars valuation of property situated within the county; providing for the holding of an election in each such county on the question of levying such equalization tax and providing for the assessment and collection of such taxes by the County Tax Collector, prescribing his duties and compensation; making provision to constitute the County Superintendent as Treasurer of the county-wide equalization district and prescribing his duties, designating the county depository as the depository for such district; prescribing the duties of the County Board of Trustees with respect to such tax and funds derived therefrom; providing that the Act shall not have the effect of changing any duties or powers imposed upon the Trustees of any common or independent school district except as expressly provided in the Act; providing a saving clause; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 677.

Art. 2744e—2. County-wide equalization districts in counties of 2,775 to 2,850 population

Section 1. All counties in this State having a population of not less than twenty-seven hundred seventy-five (2,775) and not more than twenty-eight hundred fifty (2,850), according to the last preceding Federal Census, and containing a valuation of Seven Million (\$7,000,000.00) Dollars or more, are hereby created into County-wide Equalization School Districts for tax purposes, and each such county shall have the county unit system of education to the extent specified in this Act and may exercise the taxing power conferred on school districts by Article 7, Section 3, of the Constitution, to the extent hereinafter provided, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified tax-paying voters residing therein at an election to be held for such purpose as hereinafter provided.

Sec. 2. The general management, supervision and control of the public schools and the educational interests of such counties shall be vested exclusively in the Boards of Trustees of the various school districts within such counties and the power to act in all school matters in behalf of such respective districts as is now provided by law shall be vested in said respective Boards of Trustees in the various districts with the exception of the powers herein granted to the County Board of School Trustees in said counties.

Sec. 3. The County Boards of School Trustees in all such counties are hereby vested with the authority, and only the authority, to distribute among the various school districts in such counties such funds as may be actually collected and paid into the said Equalization Fund, together with such other powers as are now by law vested in the County Board of School Trustees.

Sec. 4. Any such County-wide Equalization School District may levy and collect a tax not to exceed Forty Cents (40¢) on the One Hundred (\$100.00) Dollar valuation of property situated in said counties. The money derived from said tax shall be known as an Equalization Fund for the support of the public schools of such counties, which funds shall be distributed to the school districts of the counties as provided herein.

Sec. 5. On the petition of as many as one hundred (100) legally qualified tax-paying voters of any county subject to the provisions of this Act, praying for the authority to levy and collect said tax, the county judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days nor less than twenty (20) days from the date of such order. The county judge shall give notice of such election by causing to be published a copy of the order of election in some newspaper published in the county, once each week for three (3) consecutive weeks, prior to the date of such election, the date of the first publication to be not less than twenty (20) days prior to the date fixed for the election. Only legally qualified property tax-paying voters, who own property in the county, and have duly rendered the same for taxation shall be allowed to vote in said election. The form of the ballot shall be substantially as follows:

“For the county-wide equalization tax.”

“Against the county-wide equalization tax.”

The manner of holding said election shall be governed by the General Laws of the State of Texas regulating elections and shall be held at the regular polling places within the county. The regular election judges in such counties who have been duly appointed by the County Commissioners' Court are hereby designated as the election judges to

hold any such elections as may be called under the provisions of this Act.

The officers holding the election shall make returns thereof to the county judge within ten (10) days after the same has been held.

The Commissioners' Court shall at its next regular meeting canvass the returns of said election, and if a majority of the votes cast at said election shall favor such tax, the Court shall declare the result and certify the same to the County Board of School Trustees and to the County Tax Assessor and Collector. The County Commissioners' Court in all such counties shall thereupon be authorized to levy said tax as herein provided. The County Tax Assessor and Collector is hereby authorized and shall assess and collect such tax and after so collecting same shall certify the amount thereof to the County Board of School Trustees.

No election to revoke said tax shall be ordered until the expiration of one year from the date of the election at which said tax was adopted.

Sec. 6. In all such counties voting such equalization tax, the County Tax Assessor shall assess all the taxable property in the county at the same rate of valuation as it is assessed for State and County purposes and the County Tax Collector shall collect said taxes at the same time and in the same manner as State and County taxes are collected. The County Tax Collector shall have the same authority and the same law shall apply in the collection of said tax as in the collection of county ad valorem taxes. The County Tax Collector shall on or before the 10th of each month make a report to the County Board of School Trustees in said counties and to the County Superintendent of Schools in said counties, showing all monies collected by him during the last month by reason of said tax.

The officers assessing and collection said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Sec. 7. When the County Tax Collector shall have collected the tax provided for herein, he shall deposit the same in the County Depository Bank in a fund to be known as the "County-wide Equalization School Fund", said fund shall be disbursed by the County Board of School Trustees as herein provided out of said County-wide Equalization School Fund by the said County Board of School Trustees issuing warrants to be signed by the President of said Board, attested by the Secretary thereof, and approved by the County Superintendent of Schools in said counties.

The County Depository shall be the depository for the County-wide Equalization School Fund and such depository shall enter into a bond of like condition and amount as is prescribed by law for depositories of county funds. The County Tax Collector shall on or before the tenth (10th) day of each month deposit all monies collected by him during the preceding month for and on behalf of such County-wide Equalization School District.

Sec. 8. The County Board of School Trustees shall issue warrants as herein provided on the same basis that the State per capita apportionment is distributed among common and independent school districts, except that no per capita payment shall be issued to any school district within said counties by said County Board of School Trustees except for children actually enumerated in and residing within said county, as shown by the taker of the census in each of said districts and reported to, and approved by, the State Superintendent of Public Instruction, and upon which the State per capita apportionment is based.

Sec. 9. It is further provided that in any school district located within said counties with a scholastic population of One Hundred (100) or more, there shall have been levied for collection a total sum of One (\$1.00) Dollar on each One Hundred (\$100.00) Dollar valuation, including the Forty (40¢) Cents equalization tax herein provided, for each year, before such districts shall be eligible to receive any monies from the County-wide Equalization Tax Fund.

Sec. 10. It is hereby provided that in all school districts within such counties having a scholastic population of less than one hundred (100), the Board of School Trustees of such districts, shall have the exclusive determination of the amount of tax to be levied, if any, over and above the Forty (40¢) Cents tax levied herein by the Commissioners' Court for and on behalf of the County-wide Equalization School Fund.

Sec. 11. In the event any clause, sentence, paragraph, section, or part of this Act shall be held unconstitutional or void, then and in that event it is hereby declared to be the legislative intent that all other clauses, sentences, paragraphs, sections, and parts of this Act shall have full effect according to their purport and intent. All laws or parts of laws, both General and Special, in conflict with this Act are hereby repealed insofar and only insofar as they conflict with the provisions of this Act in its local application. Acts 1939, 46th Leg., Spec.L., p. 673.

Effective May 6, 1939.

Section 12 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act creating County-wide Equalization School Districts, for tax purposes, in all counties having a population of not less than twenty-seven hundred seventy-five (2775) and not more than twenty-eight hundred fifty (2850), according to the last preceding Federal Census, and containing a valuation of Seven Million (\$7,000,000.00) Dollars or more; providing for the vesting of the general management, supervision and control of the public schools in the Boards of Trustees of the school districts within such counties; providing for certain additional power to the County Boards of School Trustees within such counties; providing for the levying of an equalization tax of not to exceed Forty (40¢) Cents on the One Hundred (\$100.00) Dollar valuation of property situated within such counties; providing for the levying of the said tax by the Commissioners' Court of such counties; providing for the holding of an election in such counties on the ques-

tion of levying such equalization tax; providing for the assessment and collection of such tax by the County Tax Assessor and Collector; providing for the distribution of such tax fund by the County Board of School Trustees, with the approval of the County Superintendent of such counties; describing the duties and compensation of the Tax Collector; providing for a depository for the funds of such equalization districts, by designating the County Depository as the depository of such equalization districts; describing the duties of the County Board of School Trustees, of such counties, with respect to such tax and funds derived therefrom; provided that this Act shall not affect such duties now imposed upon Trustees of said counties, except as herein provided; providing certain exceptions for school districts, within such counties, having more than one hundred (100) scholastics; providing certain exceptions for school districts, within such counties, having less than one hundred (100) scholastics, providing a saving clause; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 673.

**Art. 2745a. Residents of county line district qualified to vote for trustees though residing outside county managing district**

At an election for county school trustees, all persons who are otherwise qualified to vote for county school trustees and who reside in a county line school district shall be entitled to vote for county school trustees of the county having management and control of such county line district, even though such voters reside in that portion of the county line district lying outside of the county having management and control of the county line district. Acts 1939, 46th Leg., Spec.L., p. 723, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3

declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act authorizing persons residing in county line school districts and who are otherwise qualified voters to vote for county school trustees of the county having management and control of such county line school district, even though such voters reside in

that portion of the county line district lying outside of the county having management and control of the county line district; repealing all laws and parts of laws in conflict herewith to the extent of such conflict; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 723.

**Art. 2746. [2819-20] Conduct of election**

Said trustees may appoint three (3) persons for each voting box of the district who shall be qualified voters of the district and who shall hold such election and make returns thereof to said trustees within five (5) days after such election, and said persons shall receive as compensation for their services the sum of One Dollar (\$1) each, to be paid out of the General Fund of the county in which said election was held. The board of trustees, when ordering such election and appointing persons to hold election, shall give notice of the time and place where such election will be held, which notice shall be posted at three (3) public places within the district at least twenty (20) days prior to the date of holding said election. If, at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act. Said board of trustees shall meet and canvass the returns of said election within five (5) days after returns have been made and declare the result of said election and issue to the persons so elected their commissions as such trustees, and shall notify the County Judge or the County Superintendent if the county has a Superintendent. [As amended Acts 1937, 45th Leg., p. 472, ch. 237, § 1.]

Amendment of 1937, effective April 29, 1937.

Section 2 of the amendatory acts of 1937 declared an emergency making the act effective on and after its passage.

**Art. 2750a. Contracts with principals, superintendents, and teachers; term; approval by County Superintendent**

That trustees of any common school district or consolidated common school district shall have authority to make contracts for a period of time not in excess of two (2) years with principals, superintendents, and teachers of said common school districts or consolidated common school districts, provided that such contracts shall be approved by the County Superintendent. No contract may be signed by the trustees until the newly elected trustee has qualified and taken the oath of office. Acts 1937, 45th Leg., p. 541, ch. 267, § 1.

Effective 90 days after May 22, 1937, date of adjournment.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing trustees of common school districts and consolidated common school districts to make contracts with su-

perintendents, principals, and teachers, with the approval of the County Superintendent; providing for the length of time of such employment; providing newly elected trustees may not sign contracts until they have qualified and have taken the oath of office, and declaring an emergency. Acts 1937, 45th Leg., p. 541, ch. 267.

## 2. INDEPENDENT DISTRICTS IN TOWNS

**Art. 2761b. Exemption from county control of independent districts in counties of 11,000 to 11,021 population**

In all counties having a population of not fewer than eleven thousand (11,000) nor more than eleven thousand and twenty-one (11,021) according to the last preceding Federal Census, the independent school districts of said counties regardless of their scholastic population, shall be exempt from county supervision of their schools. Provided that said schools shall be subject to assessment and payment of county administration costs as provided in the General Law, and the provisions of the General Law relating to taking of scholastic census and supervision of rural aid shall also continue to apply to such districts. [Acts 1937, 45th Leg., 2nd C.S., p. 1877, ch. 10, § 1.]

Effective Nov. 3, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to exempt from county supervi-

sion of its schools all independent school districts in certain counties regardless of the population of said districts, and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1877, ch. 10.]

**Art. 2764a. Elementary districts in grouped high school districts in certain counties authorized to create independent district**

In all counties having a total population of not more than fifteen thousand, seven hundred and twenty-five (15,725) and not less than fifteen thousand, seven hundred and fifteen (15,715) according to the last preceding Federal Census, and at the same time in all counties having a scholastic population of not more than five thousand and fifteen (5,015) and not less than five thousand and thirteen (5,013) according to the scholastic census of 1938-1939 as contained in the Public School Directory of the State Department of Education, any elementary school district in a grouped high school district may by majority vote of its people create an independent school district, which shall be separate and apart from the rural high school district, upon petition of twenty (20) resident qualified tax-paying voters to the County Judge for an election for such purposes and the County Judge shall order said election upon said petition and the Commissioners' Court of the county shall canvass the returns and declare the result. Upon receipt of a copy of said board order, all State school officials shall set up said independent school district and shall accept depository bond and make the State apportionment to said district direct and not to the rural high school district. Acts 1939, 46th Leg., Spec.L., p. 724, § 1.

Effective March 3, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that in all counties having a total population of not more than fifteen thousand, seven hundred and twenty-five (15,725) and not less than fifteen thousand, seven hundred and fifteen (15,715), according to the last preceding Federal Census, and at the same time in all

counties having a scholastic population of not more than five thousand and fifteen (5,015) and not less than five thousand and thirteen (5,013) according to the scholastic census of 1938-1939, any elementary school district in a grouped high school district may by majority vote of its people create an independent school district; providing a method of election therefor, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 724.

**Art. 2766. Change of boundaries**

Acts 1939, 46th Leg., Spec.L., p. 1018, effective May 15, 1939, reads as follows:

"Section 1. All school districts in counties having a population of not less than

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

two thousand, seven hundred and fifty (2,750), and not more than two thousand, eight hundred and fifty (2,850), according to the last preceding Federal Census, including common school districts, independent school districts, consolidated common school districts, all county-line school districts in which the school building is located in such counties having a population of not less than two thousand, seven hundred and fifty (2,750), and not more than two thousand, eight hundred and fifty (2,850), according to the last preceding Federal Census, including county-line common school districts, county-line independent school districts, county-line consolidated common school districts, county-line consolidated independent school districts, rural high school districts, and all other school districts, groups, or annexations of whole districts, or parts of districts by vote of the people residing in such districts, or by action of County School Boards, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either State or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees in such districts ordering an election or elections, declaring the results of such elections, levying, attempting, or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in nowise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees

of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such districts.

"All acts of the County Boards of Trustees of any and all counties in rearranging, changing, or subdividing such school districts or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

"Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act, or acts of said districts, or by any Act, whether General or Special, of the Legislature.

"Sec. 3. This law shall not apply to any district the organization or creation of which, or consolidation or annexation of any territory in or to such district, is now involved in litigation. Provided further that this Act shall not apply to any district which may have been established or consolidated and which was later returned to its original status.

"Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by the Court of competent jurisdiction to be invalid, as unconstitutional or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section, or part of this Act."

Sec. 5 of the act stated: "The fact that there might have been some irregularity in the organization, annexation, or change of boundaries of certain school districts in Texas," and was also the emergency clause.

#### Art. 2767g. Certain independent districts excepted from law as to creation and abolition of districts

Independent School Districts created under the provisions of Chapter 5, Acts 1930, Forty-first Legislature, Fifth Called Session,<sup>1</sup> and which comprise an entire county, such county having a population of not more than seven hundred fifty (750) according to the last preceding Federal Census, and having a scholastic population of not more than one hundred (100) according to the last scholastic census as contained in the Public School Directory of the State Department of Education, shall not be subject to the provisions of Article 2767 of the Revised Civil Statutes but are hereby declared exempt therefrom. Acts 1939, 46th Leg., Spec.L., p. 723, § 1.

<sup>1</sup> Art. 2742j.

Effective March 15, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act exempting certain Independent

School Districts created under Chapter 5, Acts 1930, Forty-first Legislature, Fifth Called Session, from the provisions of Article 2767 of the Revised Civil Statutes, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 723.

### 3. INDEPENDENT DISTRICTS IN CITIES

[Art. 2774a. Appointment or election and terms of school trustees in certain districts]

See, also, art. 2808.

**Art. 2777d.** Term of office of school trustees in cities of 101,000 to 105,000 constituting independent district

Section 1. In all cities constituting Independent School Districts, or which have assumed control of their Public Free Schools, and having, according to the last preceding Federal Census, a population of not less than one hundred and one thousand (101,000) inhabitants, and not more than one hundred and five thousand (105,000) inhabitants, the term of office of School Trustees shall be six (6) years.

#### Choosing terms by lot

Sec. 2. In all such Districts in which the terms of office of four (4) elective Trustees expire in 1937, after their successors are elected they shall determine, by lot, which two (2) members shall serve for three (3) years and which two (2) members shall serve for five (5) years. Those members drawing Nos. 1 and 2 shall serve three (3) years; those members drawing Nos. 3 and 4 shall serve five (5) years. In all such Districts in which the terms of office of three (3) elective Trustees expire in 1938, their successors shall be elected for a term of six (6) years, and thereafter on the first Saturday of April, of each even numbered calendar year, either three (3) Trustees or two (2) Trustees shall be elected to serve for a term of six (6) years.

#### Vacancy

Sec. 3. If any vacancy or vacancies shall occur in the membership of any such Board of School Trustees, such vacancy or vacancies shall be filled by the majority vote of the remaining Trustees of such District, but any Trustee so elected to fill a vacancy shall serve only for the unexpired term of his or her predecessor.

#### Time of election

Sec. 4. Except as modified by this Act, all such elections in such Independent School Districts of cities shall be held in the manner and in conformity with provisions of law now applicable; the date of such elections to be held on the first Saturday in April of the year in which the term of any such School Trustee expires.

#### Provisions cumulative

Sec. 5. The provisions of this Act shall be cumulative of all General Laws on the subject of this Act not in conflict herewith, and where not otherwise provided herein, such General Laws shall apply; but in case of conflict, the provisions of this Act shall control and be effective. [Acts 1937, 45th Leg., p. 296, ch. 153.]

Effective April 14, 1937.

Section 6 of this Act declared an emergency making the act effective on and after its passage.

Title of Act:

An Act fixing terms of office and providing for election of school trustees in cities constituting Independent School Districts or which have assumed control of their Public Free Schools and having, according to the last preceding Federal Census, a population of not less than one hundred

and one thousand (101,000) inhabitants, and not more than one hundred and five thousand (105,000) inhabitants; providing the provisions of this Act shall be cumulative of all General Laws on the subject of this Act not in conflict herewith, and where not otherwise provided herein, such General Laws shall apply; but in case of conflict, the provisions of this Act shall control and be effective, and declaring an emergency. Acts 1937, 45th Leg., p. 296, ch. 153.



#### 4. TAXES AND BONDS

**Art. 2784c. Tax rate in certain counties having population of 130,000 to 150,000**

Section 1. In all common school districts in this State which have a taxable valuation of One Million, Five Hundred Thousand Dollars (\$1,500,000) or less, as shown by the last approved tax rolls of the county in which such school districts are situated, in counties having a population of one hundred and thirty thousand (130,000) to one hundred and fifty thousand (150,000) and having therein two (2) cities of more than fifty thousand (50,000) population each, according to the last preceding Federal Census, the maximum rate of tax which may be levied in each said common school district for the maintenance of the public schools and the issuance of bonds may be One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property situated in said districts, said tax to be authorized, assessed, levied, and collected under the provisions of the General Laws. The amount of bond tax herein authorized shall never exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property.

##### Elections authorizing tax; qualifications of electors

Sec. 2. No tax shall be levied, collected, abrogated, diminished, or increased and no bonds shall be issued hereunder until such action has been first authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property taxpaying qualified voters of such district shall be entitled to vote.

##### Election procedure

Sec. 3. Before an election is held to determine the proposition of the levy of such tax, a petition therefor signed by twenty (20) or more, or a majority of those entitled to vote at such an election, shall be presented to the County Judge of the county in which such common school district is situated. On presentation of said petition, said official shall order an election for such purpose and order the sheriff to post notices thereof in three (3) places in the district for three (3) weeks prior thereto. The petition, election order, and notice of election shall in all cases either state the specific rate of tax to be voted on or that the rate shall not exceed the limit herein specified. All election orders, and notices of election shall state the date and place of holding the election. The ballots for maintenance tax elections shall have written or printed thereon the words, "For the school tax" and "Against the school tax." If said maintenance tax proposition is defeated at an election held for such purpose, no other election shall be held therefor, for one year from the date of said election. The Commissioners Court shall canvass the returns and declare the results of said election and said election shall be held and conducted as provided by law for General Elections except as herein provided.

##### Authority of Commissioners Court

Sec. 4. The Commissioners Court of the county in which such common school districts are situated under the provisions of this Act shall have the power to levy and cause to be collected the annual tax herein authorized subject to the foregoing provisions of this Act. [Acts 1937, 45th Leg., p. 779, ch. 379.]

Effective May 19, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to fix the maximum rate of tax to be levied for the purpose of maintaining the public schools and issuing of bonds

in common school districts having a taxable valuation of One Million, Five Hundred Thousand Dollars (\$1,500,000) or less in counties having a population of one hundred and thirty thousand (130,000) to one hundred and fifty thousand (150,000) and having therein two (2) cities of more than

fifty thousand (50,000) population each, according to the last preceding Federal Census; providing for elections with reference to said tax; authorizing Commissioners Courts to levy and collect said tax, and declaring an emergency. [Acts 1937, 45th Leg., p. 779, ch. 379.]

**Art. 2784d. Borrowing money, additional power of districts of 39,495 to 39,500 population and having large percentage of delinquent taxes**

Section 1. In addition to the powers conferred by other Acts, the board of education or other governing body of any school district having at any time outstanding delinquent taxes (other than bond taxes) levied within the preceding seven (7) years exceeding Eighteen Thousand Dollars (\$18,000) and not less than sixty (60) per centum of its current tax levy for maintenance and operation, may borrow money for school purposes in an amount not exceeding fifty (50) per centum of the total amount of all delinquent taxes, excluding those mentioned in Section 7 hereof, and issue notes or certificates of indebtedness therefor in anticipation of the collection of such delinquent taxes. In the resolution authorizing the issuance of said notes or certificates, the governing body of any such district shall prescribe the rate of interest and the serial maturities thereof, the maximum maturity date not to exceed fifteen (15) years, and rights of redemption prior to maturity, if any, as to such notes scheduled to mature on and after five (5) years from their date. Except as herein otherwise provided, such taxes shall be deemed to be irrevocably pledged to the payment of such notes or certificates and shall as collected be paid into a separate fund or funds to be used solely for such payment until all such notes or certificates have been paid. The proceeds of said notes shall be applied first to the payment of any valid indebtedness or renewal thereof of such district previously incurred in anticipation of the collection of such delinquent taxes, and the balance of such proceeds shall be applied to other school purposes as the board of education or other governing body of the school district may authorize and provide.

Sec. 2. Whenever any notes or certificates of indebtedness have been issued under this Act, and so long as any of them may be outstanding the officer charged with the collection of such delinquent taxes shall pay the same to the legal depository of the district, to be deposited and held in a special fund for the payment of such notes or certificates, and except as herein otherwise provided, no part thereof shall be applied or used for any other purpose.

Sec. 3. The resolution authorizing such notes or certificates may provide for the transfer from such special fund or any accumulation of moneys not reasonably necessary to secure and assure their payment, but no such transfer shall be made except in consideration of the pledge of additional delinquent taxes as herein provided. At any time after the end of the fiscal year in which such notes or certificates are issued, or at or after the end of or during any later fiscal year, as and when current taxes become delinquent, the Board of education or any other governing body of the district may pledge to such special fund the delinquent taxes of such later year in such manner as may be prescribed in such authorizing resolution. Concurrently with the pledging of such revenues, if the notes or certificates remaining unmatured or unpaid less the moneys in the special fund for their payment are less than fifty (50) per cent (or such higher percentage as may be prescribed in the resolution authorizing such notes or certificates) of the delinquent taxes of the seven (7) next preceding fiscal years so pledged, such governing body

may by resolution make the transfer of money from such funds to its general fund, provided, however, that no such transfer shall be made at any time unless all the taxes then delinquent of the later years not including the original pledge under Section 1, including all delinquent taxes of the next preceding fiscal year shall have been duly pledged to such fund and all other indebtedness chargeable against such delinquent taxes shall have been paid, and unless there shall be and remain in such special fund a sum sufficient to pay the principal and interest on such notes or certificates to fall due within one year thereafter, which sum shall also be not less at any time than an amount which, multiplied by the number of full years then remaining until the last of such notes or certificates become due, will equal the amount of notes or certificates then outstanding; provided, however, to make it clear, no such transfer of money from the special fund shall be permitted unless, after such transfer, the pledged delinquent taxes for the preceding seven (7) years shall be at least twice the amount of the outstanding certificates or notes less the amount of money left in the special fund. In addition to any requirements of such authorizing resolutions, on the occasion of each such transfer of money from the special to the general fund, the governing body of such district shall adopt a resolution making the findings of fact which are in this Section made a prerequisite to such transfer, directing the transfer of such money and authorizing its proper officers to issue proper checks or vouchers to accomplish the purpose. The resolution authorizing such notes or certificates may prescribe the form of resolution to effect such pledge of later delinquent taxes and the form of proof to be furnished the legal depository showing compliance with this Act and with such resolution. Such proof with certified copy of such resolution shall be filed with the legal depository of such district, as authority for and shall be filed with the legal depository of such district, prior to the transfer of such money. Upon receipt of and in accepting such instrument and by such transfer of funds, said legal depository shall incur no liability other than that imposed on such depository by other laws, or by the authorizing resolution, or for its own gross neglect. Such proof and such certified copy shall be available, for examination by the holder of any such certificate or note at all reasonable times, upon written request made of such legal depository. Thereafter all of such delinquent taxes additionally pledged shall be subject to the provisions of this Act in all respects as though they had been included in the original pledge under Section 1 of this Act. The officer charged with the collection of delinquent taxes shall be charged with knowledge of such pledge or transfer and all moneys collected by him and any additional delinquent taxes so pledged shall be paid into such special fund, as above provided. So long as the original pledge of said taxes remains intact, and so long as such subsequent pledges of delinquent taxes for later years and concomitant transfers of money from said special fund to the general fund are made in strict compliance with the provisions of this Section, the holder or holders of such notes or certificates shall never have the right to demand payment thereof out of any fund other than such pledged delinquent taxes, but in all other respects such notes or certificates shall constitute obligations of the district and nothing herein shall prevent the use of general funds when necessary for their payment.

Sec. 4. Nothing herein shall prevent the district from borrowing funds in any year payable out of the revenues of such year and chargeable to such revenues, including any revenues that may be derived by transfer from such special fund under Section 3 but loans chargeable

against the taxes of any year shall be paid or if so provided in the authorizing resolution described in Section 1 of the loan on current taxes securing same released before the taxes for such year when delinquent may be pledged under Section 3. For the purpose of this Act, the district may pay or renew any such current loans by new loans against the revenues of the succeeding year. But nothing in this Act shall prevent the district from pledging its current revenue or impair any loan so created.

Sec. 5. Interest and penalties on delinquent taxes shall be deemed a part of such taxes for the purpose of this Act. Should any delinquent taxes including interest and penalties be cancelled, waived, released, or reduced either by the district or in any other way, with or without its consent, the amount of the loss so sustained shall be paid by the district to the special fund provided in Section 2 out of funds not otherwise pledged to such special fund; provided, that in lieu of such payment the district may file with the legal depository a resolution and proof sufficient in form and effect to authorize the release of such moneys (if paid) from such fund under Section 3.

Sec. 6. Should there be an existing pledge at the time of the adoption of the original authorizing resolution of not exceeding ten (10) per cent of the delinquent taxes to secure indebtedness which in the judgment of the governing body is otherwise adequately secured, the resolution authorizing such notes or certificates may provide that such indebtedness, notwithstanding such pledge, shall not for purpose of this Act be deemed chargeable against such delinquent taxes and nothing in this Act or done under it shall be deemed to impair such prior charge.

Sec. 7. Taxes levied in any year to pay principal and interest of bonds which taxes subsequently become delinquent for the purpose of this Act shall not be included in the terms taxes or revenues or delinquent taxes as such herein.

Sec. 8. If and as provided in the resolution authorizing such notes or certificates, in the event of the violation of this Act or of any covenants made under it by which violation any moneys required to be paid into the special fund are not so paid or any moneys in such fund are applied, used, or transferred, except as provided by this Act, then in addition to the other rights and remedies hereunder the officer or officers required to collect any taxes or to pay any revenue to the district shall pay such taxes when collected or such revenue to the legal depository to be deposited and held in the special fund provided for the payment of such notes or certificates until the amount so paid (excluding delinquent taxes pledged) shall equal the moneys not so paid when required or the moneys so wrongfully applied, used, or transferred with interest at the rate of six (6) per cent per annum from the date of such violation. The legal depository may enforce compliance with this Act but shall not be required to do so. Any holder of such notes or certificates may enforce compliance with this Act on behalf of all the holders and may intervene in any action taken by the legal depository or by any other holder. Any reasonable expense properly incurred by the legal depository or by any such holder or holders shall, if the violation be established, constitute a charge on such special fund junior to the payment of the notes or certificates and no moneys shall thereafter be transferred from such special fund under Section 3 until such expenses are paid, or the amount claimed therefor is escrowed pending the determination of the reasonableness or propriety of such expense.

Sec. 9. Such notes or certificates shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts, and political subdivisions of and in the State of Texas in the same manner

and on the same basis that bonds of independent school districts are eligible for such purpose.

Sec. 11a. The provisions of this Act shall effect only those counties having a population of not less than thirty-nine thousand, four hundred and ninety-five (39,495), and not more than thirty-nine thousand, five hundred (39,500), according to the last Federal Census. Acts 1939, 46th Leg., Spec.L., p. 704.

Effective June 13, 1939.

Sections 10 and 11 of this Act read as follows:

"Sec. 10. The provisions of this Act shall be cumulative of all other laws, general or special, and shall not be interpreted as repealing any existing powers in such school districts, but in the event that any of the provisions of this Act are in conflict with the provisions of any other law, general or special, the provisions hereof shall take precedence and shall prevail to the extent of such conflict.

"Sec. 11. If any provision or section of this Act is held unconstitutional or invalid, the same shall not operate to defeat the whole Act, but all other parts shall stand and remain in full force and effect."

Section 12 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act conferring additional powers on school districts having a relatively large percentage of delinquent taxes including power to borrow money and issue obligations secured by such taxes and to make supplementary pledges of taxes hereafter becoming delinquent to secure the release of funds pledged for such obligations; enacting provisions incident to and relating to the subject; providing that the provisions of this Act may be cumulative of all other laws, but that in the event of conflict, the provisions hereof shall prevail; providing a saving clause; providing the provisions of this Act shall affect only counties having a population of not less than thirty-nine thousand, four hundred and ninety-five (39,495), and not more than thirty-nine thousand, five hundred (39,500), according to the last Federal Census; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 704.

**Art. 2786b. Assumption of bonded indebtedness by school districts when boundaries extended**

Section 1. This Act shall be applicable to towns and villages incorporated for free school purposes only, common school districts, independent school districts, consolidated common school districts, consolidated independent school districts, county wide school districts, consolidated county wide school districts and rural high school districts and to every other class or type of school district, which have been heretofore or hereafter shall have been extended or enlarged under such circumstances that at the time of such extension or enlargement there were or are bonds outstanding payable from taxes levied against territory which does not comprise all of the territory of such extended or enlarged district.

**Election; taxes**

Sec. 2. The governing board of any such district, without the prerequisite filing of a petition requesting such action, is hereby authorized to order that an election be held in said district as enlarged or extended on the question of the assumption of such bonded indebtedness by said district as enlarged or extended and the levying and collecting of a tax therein to pay the principal and interest thereof. The law in reference to the calling of elections and the holding of elections for the issuance of school house bonds by any such district shall be applicable to such election to the extent that such law is applicable and not in conflict herewith, and in event of conflict the provisions of this Act shall control. Only qualified electors who own taxable property in said district and who shall have duly rendered the same for taxation shall be qualified to vote. If a majority of persons voting at said election shall vote in favor of the assumption of said indebtedness and the levying and collecting of said tax said indebtedness shall from and after the canvassing of the returns and declaration of the result of said election be the general obligation of such school districts as enlarged or extended, payable from taxes that

shall be levied upon all taxable property therein, subject only to limitations prescribed by law.

It shall be the duty of the governing board of such district from and after the assumption of such indebtedness to levy and collect annually taxes against all of the taxable property in said district sufficient to pay the interest and to pay or to provide for the payment of the principal thereof.

#### **Prior elections validated**

Sec. 3. In every instance wherein an election has been held heretofore in any such district on the question of the assumption of indebtedness by such district as enlarged or extended, where a majority of those voting at said election voted in favor of the assumption of such indebtedness, and in which the governing board of such districts has heretofore canvassed the returns and declared the result thereof, the act of the governing board of such district in calling said election, the act of the voters in voting to assume such indebtedness, and the act of the governing board in canvassing the returns and declaring the results of such election are each and all hereby expressly validated. The indebtedness thus attempted to be assumed at each such election is hereby declared to be the indebtedness of such district as enlarged and extended and the duty is hereby imposed on the governing board of each such district to levy and collect annually taxes against all of the property in said district, sufficient to pay the interest and to pay or provide a proportionate part of the principal thereof.

#### **Refunding indebtedness; bonds**

Sec. 4. The law applicable to the issuance of refunding bonds by school districts shall be available in reference to the indebtedness thus assumed under or validated by the provisions of this Act, in event the governing board of such district elects to refund such indebtedness. In every instance wherein an election has heretofore been held on the question of assuming any such indebtedness and the governing board of such district has adopted resolutions or passed orders authorizing the issuance of refunding bonds eligible in exchange for said indebtedness which the district has attempted to assume, the actions taken by such governing board are hereby expressly validated and said refunding bonds when approved by the Attorney General of the State of Texas and registered in the office of the Comptroller of Public Accounts of the State of Texas in lieu of said original items of indebtedness are hereby expressly validated and when so issued registered and delivered shall constitute valid and binding obligations of such district so extended or enlarged.

#### **Application of act**

Sec. 5. It is expressly provided, however, that the provisions of this Act validating elections heretofore held on the question of the assumption of indebtedness and validating refunding proceedings heretofore had by such governing boards shall not apply in instances wherein the validity of such election or the validity of such action by such governing board is in litigation at the time this Act becomes effective.

#### **Districts having coterminous boundaries**

Sec. 6. In each instance wherein a common school district has been or shall hereafter be converted into an independent school district and in each instance wherein a district of any kind or class has been converted into a district of any other kind or class the boundaries of said original district and of said successor district being coterminous, the indebtedness

of said original district shall be held and considered and is hereby declared to be the indebtedness of said successor district without the necessity of an election of any character for the assumption of such indebtedness, and the duty is hereby imposed on the governing board of such successor district to levy and collect annually taxes against all of the property in said district, sufficient to pay the interest and to pay or provide a proportionate part of the principal thereof. In each instance wherein the governing board of any such converted district shall have heretofore adopted resolutions or passed orders authorizing the issuance of refunding bonds for the purpose of taking up or including therein indebtedness created by any such original district such actions are hereby validated and said refunding bonds as and when approved by the Attorney General of the State of Texas and registered in the office of the Comptroller of Public Accounts of the State of Texas in lieu of such original bonds are hereby expressly validated and shall be held to be the binding obligations of said converted district. [Acts 1936, 44th Leg., 3rd C.S., p. 2105, ch. 508.]

Effective Oct. 31, 1936.

Section 7 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the assumption of bonded indebtedness by districts whose boundaries have been extended or enlarged; prescribing the method of holding elections on the question of the assumption of such indebtedness and the levying and collecting of a tax to pay the principal and interest thereof; imposing the duty on the governing board of any such district to levy and collect such taxes; validating assumption elections heretofore held in instances wherein said elections were carried by a majority vote; declaring such indebtedness to be the indebtedness of such district as enlarged or extended; imposing the duty on the governing board of any such district to levy and collect taxes to pay the principal and interest thereof; making applica-

ble to such indebtedness the law authorizing school districts to issue refunding bonds; validating refunding procedure heretofore attempted by such districts; providing the provisions of this Act shall not apply in instances wherein the validity of such election or the validity of such action by such governing board is in litigation at the time this Act becomes effective; providing that a successor district shall be liable for the indebtedness of its predecessor district in instances wherein the boundaries of said districts are coterminous without the necessity of an election of any character; imposing the duty on the governing board of such district to levy and collect taxes to pay the principal and interest of such indebtedness; validating the attempted issuance of refunding bonds heretofore authorized by such districts, and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 2105, ch. 508.]

**Art. 2787b. Serial coupon bonds**

Section 1. Any common school district or independent school district, located in any county having a population of not less than one hundred and twenty thousand (120,000) and not more than one hundred and thirty-three thousand (133,000) as shown by the last preceding United States Census whether created by special Act of the Legislature or by vote of the people, and any city or town which has assumed control of its public schools may issue serial coupon bonds in the manner now provided by law for the issuance of bonds by common and independent school districts, for the purpose of building and equipping schoolhouses, to purchase sites therefor, for the purpose of purchasing or building a teachers' home and for purchasing land in connection therewith; provided that no bonds shall be issued to provide a teachers' home in a district employing fewer than three (3) teachers in a single school.

Sec. 2. In any city or town located in any county having a population of not less than one hundred and twenty thousand (120,000) and not more than one hundred and thirty-three thousand (133,000) as shown by the last preceding United States Census which has, when this Act becomes effective, assumed the control of the public free schools therein, or which shall hereafter assume control of its public free schools, re-

ardless of whether such control was or shall be acquired by the authority of Articles 2768 or 2769 of the Revised Civil Statutes of Texas of 1925, or any local, general or special law, or the provision of any charter, or by any other authority whatsoever, where such control is exercised through a Board of Trustees, such Board of Trustees shall have and may exercise all and singular the powers and authority in respect of the issuance of bonds for school purposes possessed by Boards of Trustees of independent school districts organized for school purposes only. No such bonds shall be issued until such action shall have been authorized by a majority of the votes cast at an election held in the school district constituted of such city or town at which none but qualified voters who own taxable property in said school district and who have duly rendered the same for taxation shall be entitled to vote. The calling and holding of such election, the authorization by the electorate of the issuance of such bonds, and the issuance, sale and disposition thereof, shall be governed by Articles 2785, 2786, and 2788, Revised Civil Statutes of Texas of 1925, and any amendments thereto, and any other provisions of the laws of the State applicable to the authorization and issuance of bonds of independent school districts proper, except as such procedure shall be altered or modified by the provisions hereof. The proceeds of the sale of such bonds shall be deposited in the depository of such school district, to the credit thereof, and shall be disbursed only for the purpose for which the said bonds were issued on warrants issued by the president of the Board of Trustees of such district and countersigned by the secretary of such Board.

Sec. 3. Where such bonds shall be issued by a city or town which has assumed the control of its schools, the Board of Trustees of such school district shall annually cause to be levied, assessed and collected, in form and manner provided by law for the levy, assessment and collection of other school taxes within said district, a tax sufficient in amount to provide for the payment of the annual accrual of interest on such bonds and for the retirement of the principal sum thereof at maturity, such tax not to exceed, however, fifty cents on the one hundred dollars valuation of taxable property within said school district. Such tax shall be levied, assessed and collected at the same time that the regular maintenance tax of said school district shall be levied, assessed and collected. The amount of tax levied for the service of bonds issued pursuant to the authority herein granted, together with the amount of tax levied for the service of bonds issued by such city or town in its capacity as a school district under the authority of any other law and the amount of maintenance tax levied for the benefit of said school district shall not exceed the total of the school district tax authorized to be levied by vote of the qualified electorate of said school district under the authority of Section 3 of Article 7 of the Constitution of the State and the Acts of the Legislature passed pursuant thereto.

Sec. 4. Bonds so issued shall be the obligations of the city or town constituting such school district in its capacity as a school district proper; provided, however, that any limitation in the amount of bonded indebtedness permitted such city or town contained in the charter of such city or town, or in other provision of law, general or special, shall not apply to the issuance of bonds by such city or town in its capacity as a school district proper pursuant to the authority herein granted, and the total of such bonds shall not be computed in determining the limit of the bonded indebtedness permitted such city or town by its charter, or other provision of law, general or special.

Sec. 5. From and after the effective date of this Act the power to issue bonds for school purposes in any city or town located in any coun-



ty having a population of not less than one hundred and twenty thousand (120,000) and not more than one hundred and thirty-three thousand (133,000) as shown by the last preceding United States Census which has assumed the control of its schools shall be vested exclusively in the Board of Trustees where such schools are managed and controlled by a Board of Trustees.

Sec. 6. Nothing herein appearing shall, in anywise, affect the validity of any bonds issued by any such city or town prior to the effective date of this Act by and through the governing body of such city or town, nor shall it affect, in anywise, the authority of the governing body of such city or town to issue any bonds for school purposes authorized by vote of the qualified electorate of such city or town prior to the effective date of this enactment. Bonds for school purposes heretofore lawfully issued by the governing body of such city or town, together with such bonds hereafter issued by the governing body of such city or town pursuant to authorization of the electorate voted prior to the effective date of this enactment, shall be and constitute the valid and subsisting obligations of such city or town in its capacity as a school district, and the payment of interest on and provision for the redemption of the principal of such bonds shall be provided for in the manner prescribed by existing applicable provisions of the laws of the State or the charter of such city or town. Acts 1939, 46th Leg., Spec.L., p. 695.

Effective May 17, 1939.

Section 7 of the Act of 1939 repeals all conflicting laws and parts of laws; section 8 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for the issuance of serial coupon bonds for school purposes; authorizing such bonds to be issued by the Board of Trustees of any city or town located in any county having a population of not less than one hundred and twenty thousand (120,000) and not more than one hundred and thirty-three thousand (133,000) as shown by the last preceding United States Census which has assumed the control of its public free schools, or shall hereafter assume control thereof, where control of such schools is exercised through a Board of Trustees; pro-

viding for the calling and holding of election to authorize issuance of such bonds, and the issuance thereof in form and manner authorized in respect of independent school districts proper; providing for the levy and collection of tax necessary for the service of such bonds; providing that such bonds shall be the obligations of the city or town in its capacity as a school district proper and that any limitation in the amount of bonded indebtedness permitted such city or town contained in the charter of such city or town, or in other provision of law, general or special, shall not apply to the issuance of such bonds, vesting the issuance thereof exclusively in the Board of Trustees; repealing all laws and parts of laws, general and special, in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 695.

**Art. 2787c. Validating certain bonds**

Section 1. That from and after the effective date of this Act, in all consolidated common school districts in this State, located in counties having a population, according to the last Federal Census, of not less than twenty-seven thousand, one hundred (27,100), and not more than twenty-seven thousand, four hundred and ten (27,410); and where said districts have a scholastic population, according to the 1938-1939 scholastic enumeration as shown by the Census Division of the State Department of Education, of not less than one hundred (100) nor more than one hundred and thirty (130) pupils within the scholastic age; all acts of the Boards of Trustees of such districts in regard to the ordering of elections for the purpose of voting bonds, and the election pursuant to such order, the order declaring the result of such election, the issuance of such bonds, the levying and assessment of taxes for the purpose of liquidating such bonds and each and every thing requisite to the

validity of such issuance are hereby ratified, confirmed and in all things and respects validated.

Sec. 2. This Act shall be deemed cumulative of all laws now in force in this State, not in conflict herewith. Acts 1939, 46th Leg., Spec.L., p. 1031.

Effective May 15, 1939.

Section 3 of this Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating, ratifying, and confirming all elections held for the issuance of bonds for the purpose of building school-houses in consolidated common school districts in this State, where such school districts are located in counties having a population of not less than twenty-seven thousand, one hundred (27,100), and not more

than twenty-seven thousand, four hundred and ten (27,410), according to the last Federal Census, and where such school districts have a scholastic population, according to the 1938-1939 scholastic enumeration as shown in the Census Division of the Department of Education, of not less than one hundred (100), nor more than one hundred and thirty (130) pupils within the scholastic age; making said law cumulative of all laws now in force in this State not in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1031.

**Art. 2787d. Bonds of common school districts for transportation facilities in counties of 11,021 to 11,050 population**

Section 1. That common school districts in each county in Texas having a population of not less than eleven thousand and twenty-one (11,021) nor more than eleven thousand and fifty (11,050) according to the latest Federal Census, shall from and after the passage of this Act have the legal privilege of voting bonds upon the faith and credit of said common school district for the purpose of purchasing a school bus, body, or chassis with the same laws applying to the voting of school house bonds being made applicable to all such issues.

Sec. 2. No common school district with any other outstanding bonded indebtedness shall be permitted to vote any bond or bonds for the purpose of purchasing a school bus, body, or chassis.

Sec. 3. No common school district levying less than One (\$1.00) Dollar local maintenance tax shall be permitted to vote any bond or bonds for the purpose of purchasing a school bus, body, or chassis.

Sec. 4. No common school district shall vote bonds for the purpose of purchasing a school bus, body, or chassis whose maturity date or dates exceed five years from the date of the issue.

Sec. 5. No common school district shall ever vote bonds for the purpose of purchasing a school bus, chassis, or body in excess of two (2%) per cent of the valuation of the school district according to the latest tax roll of the district. Acts 1939, 46th Leg., Spec.L., p. 698.

Effective July 8, 1939.

Section 6 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 7 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to enable common school districts in each county of Texas having a population of not less than eleven thousand twenty-one

(11,021) nor more than eleven thousand fifty (11,050) according to the latest Federal Census, to vote bonds, levy taxes for the same, for the purpose of purchasing not more than one school bus, or one school bus body, or one school bus chassis; repealing all laws or parts of laws in conflict herewith, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 698.

**Art. 2790a—1. Levies and assessments of ad valorem taxes validated**

That all levies and assessments of ad valorem taxes heretofore made by the governing body of any independent school district in this State, not in excess of the limit now provided by law, which are voidable or unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by order, as

required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of any independent school district in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient, and voidable, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such independent school districts, which are irregular or insufficient (because the reports of such equalization were adopted and accepted) orally, or by other informal action; and the acts of making such equalization were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record and signed by the proper officials of such governing body, and the same as though such assessments of property within such independent school districts for taxation purposes had been made in due and complete form, and the same as though said equalizations and the reports of each of the Boards of Equalization acting for said independent school districts had been made in due and regular form, and adopted and accepted in due and regular form. Provided further, however, the terms of this Act shall not apply to such districts situated wholly or partly within counties having a population of one hundred thousand (100,000) inhabitants or more according to the last preceding Federal Census. Provided further, however, that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such property has been valued in excess of its reasonable cash market value, or where such property has been discriminated against as to value or placed upon the rolls at a higher value than property of like kind and character, or at a greater percentage of its value than other property assessed for taxation. Provided, however, that this Act shall not affect any suit now pending in any Court of this State, or that may be filed in ninety (90) days after the effective date hereof and shall not validate any levy, assessment or valuation made or placed on any property where any suit as aforementioned shall be or shall have been filed within the time aforementioned. [Acts 1936, 44th Leg., 3rd C.S., p. 2088, ch. 499 § 1.]

Effective 90 days after Oct. 27, 1936, date of adjournment.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate, ratify, approve, confirm, and declare enforceable all levies and assessments of ad valorem taxes heretofore made by independent school districts in this State not in excess of the limit now provided by law, which are voidable and unenforceable because the same were made and adopted by resolution, motion, or other informal action, and because of the failure of the governing body of such districts to appoint the proper and statutory Board of Equalization; and which are insufficient and voidable, or unenforceable on account

of technical irregularities in the manner of preparing the books and reports of assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Boards of Equalization acting for any such school districts, which are irregular or insufficient because the reports of such equalizations were adopted and accepted orally, or by other informal action; and the acts of making such equalization were made orally or informally, or in incomplete form; providing this Act shall not affect suits pending at the time same becomes effective, or those filed within ninety (90) days after effective date hereof; and providing further that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such property has been valued in excess of its reasonable cash market

value, or apply to districts situated wholly or partly in counties having a population of one hundred thousand (100,000) inhabitants, or more according to the last preceding Federal Census, or where such property has been discriminated against as to

value or placed upon the rolls at a higher value than property of like kind and character, or at a greater percentage of its value than other property assessed for taxation, and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 2088, ch. 499.]

**Art. 2790a—2. Repealed. Acts 1939, 46th Leg., Spec.L., p. 1025, § 2.  
Effective April 5, 1939**

Article was derived from Acts 1939, 46th Leg., Spec.L., p. 1023, § 1, effective Feb. 17, 1939.

**Art. 2790a—3. Ad valorem tax levies and assessments validated in county line independent districts of 17,000 to 17,500 population**

That all levies and assessments of ad valorem taxes heretofore made by the governing body of any county line independent school district in this State, partly situated in three (3) counties, the supervision of said school district being located in counties having a population of not less than seventeen thousand (17,000) and not more than seventeen thousand, five hundred (17,500), according to the last preceding Federal Census, not in excess of the limit now provided by law, which are void or unenforceable because such levies were made and adopted by resolution, motion, or other informal action, instead of having been made by order, as required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of said county line independent school district in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and Statutory Board of Equalization, as required by law, and which are insufficient, and void, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the Assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such county line independent school districts, which are irregular or insufficient because the reports of such equalization were adopted and accepted orally, or by other informal action; and the acts of making such equalization were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion, or resolution, duly passed, entered of record, and signed by the proper officials of such governing body, and the same as though such assessments of property within such county line independent school districts for taxation purposes had been made in due and complete form, and the same as though said equalizations and the reports of each of the Boards of Equalization acting for said county line independent school districts had been made in due and regular form, and adopted and accepted in due and regular form. Provided, however, that this Act shall not affect any suits pending at the time same becomes effective, which have been filed for the collection of taxes by any independent school district in this State; and provided further, that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such property has been valued in excess of its reasonable cash market value, or where such property has been discriminated against as to value or placed upon the rolls at a high-

er value than property of like kind and character, or at a greater percentage of its value than other property assessed for taxation. Acts 1939, 46th Leg., Spec.L., p. 1025, § 1.

Effective April 5, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws, and especially Acts 1939, 46th Leg., Spec.L., p. 1023, art. 2790a—2.

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to validate, ratify, approve, confirm, and declare enforceable all levies and assessments of ad valorem taxes heretofore made by certain county line independent school districts, partly situated in three (3) counties, the supervision of said school being located in counties having a population not less than seventeen thousand (17,000) nor more than seventeen thousand, five hundred (17,500), as shown by the last preceding Federal Census, not in excess of a limit now provided by law. Such levies validated are the same as are now on record in the Auditor's Division of the State Department of Education; such levies and assessments are void or unenforceable because the same were made and adopted by resolution, motion, or other informal action, and because of the failure of the governing body of such districts to appoint the proper and Statutory Board of Equalization; and which are insufficient and void, or unenforce-

able on account of technical irregularities in the manner of preparing the books and reports of Assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Boards of Equalization acting for any such schools districts, which are irregular or insufficient because the reports of such equalizations were adopted and accepted orally, or by other informal action; and the acts of making such equalization were made orally or informally, or in incomplete form; providing this Act shall not affect suits pending at the time same becomes effective; and further providing that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such property has been valued in excess of its reasonable cash market value, or where such property has been discriminated against as to value or placed upon the rolls at a higher value than property of like kind and character, or at a greater percentage of its value than other property assessed for taxation; repealing all laws and parts of laws in conflict with this Act and especially repealing House Bill No. 209, Acts of the Forty-sixth Legislature; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1025.

**Art. 2790a—4. Tax levy by independent districts having limitation upon rate less than one dollar**

Any independent school district in this State, having a limitation upon the tax rate that may be levied and collected in any one year which is less than One (\$1.00) Dollar on the One Hundred (\$100.00) Dollars valuation of taxable property subject to taxation in said district, whether such independent school district was created under the general law or any special law or laws of this State, shall hereafter be authorized and have the power to levy and cause to be collected, when authorized by a majority of the qualified property taxpaying voters of such district voting at an election to be held for that purpose, a tax not to exceed in any one year One (\$1.00) Dollar on the One Hundred (\$100.00) Dollars valuation of taxable property. Acts 1939, 46th Leg., p. 292, § 1.

Effective May 10, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing that all independent school districts in this State, whether created by general or special law or laws, having a tax rate of less than One (\$1.00) Dollar upon each One Hundred (\$100.00) Dol-

lars taxable valuation of property, subject to taxation in such district, may be authorized by a majority vote of the qualified taxpaying voters of said district, to levy and collect an annual tax not to exceed in any one year One (\$1.00) Dollar on the One Hundred (\$100.00) Dollars valuation of taxable property in said district; repealing all laws and parts of laws in conflict herewith, both general and special, and declaring an emergency. Acts 1939, 46th Leg., p. 292.

**Art. 2790d—1. Time warrants authorized in counties of 5,796 to 5,890 population to refund and extend indebtedness**

**Section 1.** In all Counties having a population of not less than five thousand seven hundred and ninety-six nor more than five thousand eight hundred and ninety inhabitants according to the last preceding Federal Census, it shall be lawful for School Districts located therein to create and issue upon the faith and credit of said Districts, time warrants for the purpose of taking up, refunding and extending indebtedness heretofore legally incurred for the local maintenance of schools in said Districts.

**Sec. 2.** Such time warrants shall be payable over a period of years as the Board of Trustees of any such issuing District may determine, not to exceed ten (10) years and may be redeemable as the Board shall prescribe, and shall draw interest not to exceed six (6) per cent per annum, said interest payable annually or semi-annually. The Board of Trustees of any such issuing District is authorized to create a special sinking fund to pay interest on said warrants and to liquidate said warrants as they mature, provided no warrants shall be issued in excess of an amount that may be redeemed with interest (together with all the bonded indebtedness of said District) by the levying of an annual tax not to exceed Fifty (50¢) Cents on each One Hundred (\$100.00) Dollars valuation of said District, and provided no such warrants shall be issued by any common school district hereunder without the approval of the Commissioners' Court of said County. Acts 1939, 46th Leg., Spec.L., p. 200.

Effective Feb. 6, 1939.

**Title of Act:**

An Act permitting trustees of School Districts in Counties having a population of not less than five thousand seven hundred and ninety-six nor more than five thousand eight hundred and ninety inhabitants according to the last preceding Federal Census to issue time warrants for

the purpose of taking up, refunding and extending indebtedness incurred for the legal maintenance of schools in said Districts; providing for the amount and maturity of such warrants and interest thereon and for the mode of payment, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 700.

**Art. 2790d—2. Refunding warrants of independent districts having population of 13,950 to 14,050 authorized**

**Section 1.** As to all counties having a population of not less than thirteen thousand, nine hundred and fifty (13,950) nor more than fourteen thousand and fifty (14,050) inhabitants according to the last preceding Federal Census, it shall be lawful for independent school districts located therein to create and issue, upon the faith and credit of said districts, time warrants for the purpose of taking up, refunding, and extending indebtedness heretofore legally incurred for the local maintenance of schools in said districts.

**Sec. 2.** Such time warrants shall be payable within five (5) years from August 31, 1939, and shall bear interest at not more than six (6) per cent per annum, and the boards of trustees of said independent school districts shall levy a sufficient tax within legal limitations to pay the interest on said obligations, and to create a sinking fund to discharge them at maturity. The powers herein granted shall be exercised by the boards of trustees of said districts without the necessity of a vote by the people. Acts 1939, 46th Leg., Spec.L., p. 701.

Effective Feb. 23, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to authorize all independent school districts in certain counties to pay present outstanding legal indebtedness of

the said school districts by refunding warrants to bear interest of not more than six (6) per cent per annum, and to be payable out of a portion of the local main-

tenance taxes; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 701.

**Art. 2790d—3. Refunding warrants authorized and validated in county line independent districts located in three or more counties; 17,000 to 17,500 population; tax levy to pay warrants**

Section 1. Refunding warrants authorized and validated in county line independent school districts, located partly in three (3) or more counties, the supervision of said schools being located in counties having a population of not less than seventeen thousand (17,000) nor more than seventeen thousand, five hundred (17,500) as shown by the last preceding Federal Census, tax levy to pay warrants.

Sec. 2. This Act shall be applicable to county line independent school districts situated partly in three (3) or more counties, the supervision of said schools being located in counties having a population of not less than seventeen thousand (17,000) nor more than seventeen thousand, five hundred (17,500) as shown by the last preceding Federal Census. It shall be lawful for county line independent school districts located therein to create and issue, upon the faith and credit of said districts, time warrants for the purpose of taking up, refunding, and extending indebtedness heretofore legally incurred for the local maintenance of county line independent schools in said district.

Sec. 3. Such time warrants shall be payable within ten (10) years from January 1, 1939, and they shall bear interest at six (6) per cent per annum, and the Board of Trustees of any such county line independent school district shall have authority to pass all orders necessary or convenient to effect the surrender of said original vouchers for cancellation and to deliver refunding warrants in lieu thereof to the holders of said vouchers. Said refunding warrants shall bear interest at a rate not exceeding six (6) per cent per annum, payable semiannually, and shall be payable serially at such times and in such amounts as may be determined by the Board, the maximum maturity date being not more than ten (10) years after the date of said refunding warrants. The Board of Trustees shall have authority to reserve the right to retire said warrants before their maturity date upon the giving of proper notice to the holders, the method and time of which notice shall be prescribed in the order authorizing said warrants.

Sec. 4. It shall be the duty of the Board of Trustees of any district issuing said refunding warrants to levy a continuing tax within the total rate theretofore voted by the district for maintenance and other purposes, sufficient to pay the principal and interest of said refunding warrants as said interest and principal mature, and to have said tax assessed and collected. It shall be the duty of the Board of Trustees to take into consideration the tax necessary for said purpose from year to year in fixing the annual tax levied for maintenance and other purposes and to include within said general tax levy an amount sufficient to pay the principal and interest of said refunding warrants. Acts 1939, 46th Leg., Spec.L., p. 702.

Effective March 3, 1939.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to authorize Boards of Trustees of all county line independent school dis-

tricts partly situated in three (3) or more counties, the supervision of said school being located in counties having a population of not less than seventeen thousand (17,000) nor more than seventeen thousand, five hundred (17,500) as shown by the last preceding Federal Census, to

pay present outstanding legal indebtedness of said county line independent school districts by refunding warrants to bear interest of not more than six (6) per cent

per annum and to be payable out of a portion of the local maintenance taxes; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 702.

**Art. 2790g. Tax rate in certain independent districts of 15,140 to 15,160 population; elections**

Section 1. In any independent school district having and including within its limits two counties or portions thereof one of which counties according to the latest Federal Census had a population of not fewer than fifteen thousand, one hundred and forty (15,140) and not more than fifteen thousand, one hundred and sixty (15,160) inhabitants, the school district trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property of the district as fixed by the county and collected by the County Assessor-Collector;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents (\$1.50);

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by two-thirds of the votes cast at an election held in the district for such purpose, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1937, 45th Leg., p. 781, ch. 381, § 1.]

Effective May 19, 1937.

Section 2 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts which include within their limits two (2) counties or portions thereof one of which counties according to the latest Federal Census had

a population of not fewer than fifteen thousand, one hundred and forty (15,140) and not more than fifteen thousand, one hundred and sixty (15,160) inhabitants, whether organized under General or Special Law; providing the values to be fixed by the County Board of Equalization and taxes to be collected by the Assessor-Collector; providing for an election; repealing all laws or parts of laws in conflict herewith, both General and Special; and declaring an emergency. [Acts 1937, 45th Leg., p. 781, ch. 381.]



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 2790h. Independent districts in counties of 32,350 to 32,800 population authorized to borrow money for construction of schools; interest bearing warrants authorized

Section 1. This Act shall apply to independent school districts in counties having a population of not less than thirty-two thousand three hundred fifty (32,350) and not more than thirty-two thousand eight hundred (32,800) according to the last preceding Federal Census. Independent school districts in said counties are hereby authorized to borrow the sum of not more than One Hundred Fifty Thousand (\$150,000.00) Dollars for the purpose of supplementing funds on hand to construct and equip public free school buildings of and in said independent school districts, and to issue time warrants within the limitations and upon the conditions prescribed in Section 2 hereof to evidence the indebtedness so incurred.

Sec. 2. Such time warrants as are authorized by Section 1 of this Act shall be payable within three (3) years from the effective date of this Act and shall bear interest at not more than the rate of five (5%) per cent per annum, and the Boards of Trustees of said independent school districts shall levy a sufficient tax, within legal limitations, to pay the interest on said obligations, and to create a sinking fund sufficient to discharge them at maturity. The powers granted by this Act shall be exercised by the Boards of Trustees of said districts without the necessity of a vote by the people. [Acts 1937, 45th Leg., 1st C.S., p. 1750, ch. 6.]

Effective July 6, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act applying to independent school districts in counties having a population of not less than thirty-two thousand three hundred fifty (32,350) and not more than thirty-two thousand eight hundred (32,800) according to the last preceding Federal Census; authorizing said school districts to borrow money in a sum not to exceed

One Hundred Fifty Thousand (\$150,000.00) Dollars to supplement funds on hand for the construction and equipping of public free school buildings, and to issue time warrants therefor without an election; prescribing the terms and conditions for issuance of said time warrants; providing for the levying of a tax to pay same; prescribing the terms and conditions and the rate of interest of said time warrants; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1750, ch. 6.]

Art. 2790i. Time warrants of independent districts of 769 to 775 scholastics validated

Section 1. All time warrants heretofore authorized by the governing bodies of all Independent School Districts in the State of Texas having a scholastic enumeration of not less than 769 and not more than 775, according to the last preceding scholastic enumeration and all proceedings heretofore had in connection with the issuance of such time warrants, including the levy of and provision for a tax for the payment of principal and interest on said time warrants as the same mature, are hereby validated, ratified and confirmed and legalized. The governing bodies of such Independent School Districts shall be and they are hereby authorized and empowered to do any and all things necessary and requisite in the issuance, sale and delivery of said time warrants, and when so issued and delivered, said time warrants shall constitute legal and binding obligations of such Independent School Districts.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings or to any such time warrants heretofore authorized as aforesaid, the validity of which is being contested or attacked in any suit pending at the time this Act takes effect. [Acts 1937, 45th Leg., 1st C.S., p. 1781, ch. 20.]

Effective June 28, 1937.

Section 3 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating, ratifying, confirming and legalizing all time warrants heretofore authorized by the governing bodies of Independent School Districts in the State of Texas having a scholastic enumeration of not less than 769 and not more than 775 according to the last preceding scholastic enumeration, validating all proceedings heretofore had in connection with the issuance of such time warrants, including the levy of and provision for a tax for the payment of principal and interest on said time warrants as the same mature

and authorizing such governing bodies of said Independent School Districts to do any and all things necessary and requisite in the issuance, sale and delivery of said time warrants; providing that such time warrants, when issued and delivered, shall constitute legal and binding obligations of such Independent School Districts; providing that this Act shall not apply to any proceedings or time warrants, the validity of which is being contested in any suit pending at the effective date of this Act and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1781, ch. 20.]

**Art. 2790j. Refunding bonds authorized in certain independent districts containing city or town of 7,100 to 7,200 population**

Any independent school district in which there is situated a city or town with a population of not less than seven thousand, one hundred (7,100) and not more than seven thousand, two hundred (7,200), according to the last preceding Federal Census, which independent school district has outstanding bonds and is delinquent in the payment of either principal or interest upon said bonds, and which said bonds were originally sold at a premium and such independent school district realized the benefit from said premium, and which independent school district can refinance and/or refund said bonds at a less rate of interest than said bonds now bear and thereby create a saving for such independent school district, is hereby authorized to expend not more than fifty (50) per cent of the taxes assessed and collected by such independent school district for a period of years not to exceed four (4) from the date said bonds are refinanced and/or refunded for the purpose of paying warrants issued by such independent school district in payment of the premium originally realized upon the sale of said bonds, in the repurchase of the same for the purpose of refinancing and/or refunding said bonds, and for the purpose of paying the actual and necessary cost of refinancing and/or refunding said bonds, providing said warrants shall not bear interest at a greater rate than six (6) per cent per annum and provided further that no taxes assessed and collected shall be used for such purposes which shall be necessary to pay the interest and create a sinking fund on any outstanding bonds of such independent school district. [Acts 1937, 45th Leg., 1st C.S., p. 1814, ch. 34, § 1.]

Effective June 28, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing independent school districts in which there is situated a city with a population of not less than seven thousand, one hundred (7,100) and not more than seven thousand, two hundred (7,200), according to the last preceding Federal Census, to expend not more than

fifty (50) per cent of the taxes assessed and collected for a period not to exceed four (4) years, for the purpose of paying warrants issued in the payment of premium upon bonds refinanced and/or refunded by such independent school district at a less rate of interest and thereby create a saving, and in the payment of the actual and necessary cost of refinancing and of refunding said bonds; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1814, ch. 34.]

**Art. 2790k. Tax rate in independent districts in certain cities**

In any Independent School District including within its limits a city of which had a population of more than seven thousand, eight hundred and fifty (7,850), and less than eight thousand (8,000), according to the last preceding Federal Census, the School District Trustees of the Independent District or the City Council or any Commission

of any such city which has heretofore assumed control of its public school shall have the power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Twenty-five Cents (\$1.25) on the one hundred dollars valuation of taxable property of the district or the city;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such Districts and the purchase of the necessary sites therefor, a tax not to exceed Sixty (60) Cents on the one hundred dollars valuation, such tax to be the payment of the current interest on and provide a Sinking Fund sufficient to pay the principal of bonds which said Districts are empowered to issue for such purposes;

(3) The amount of maintenance tax, together with the amount of bond tax of any district, shall never exceed One Dollar and Twenty-five Cents (\$1.25) on the one hundred dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed One Dollar and Twenty-five Cents (\$1.25) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Twenty-five Cents (\$1.25); but if the bond tax shall at any time not equal Sixty (60) Cents on the one hundred dollars valuation, the District shall nevertheless have the power to levy and collect an ad valorem tax of not to exceed One Dollar and Twenty-five Cents (\$1.25) on the one hundred dollars valuation;

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the District for such purposes, at which none but property tax-paying qualified voters of such District who have duly rendered their property for taxation shall be entitled to vote. Acts 1939, 46th Leg., Spec.L., p. 668, § 1.

Effective May 19, 1939.

Sec. 2 of the Act of 1939 provided: "All laws and parts of laws, both General and Special, in conflict herewith, are hereby repealed; provided, however, that nothing in this Act contained shall affect any such Independent School District which at this time may have a larger authorized rate of taxation than specified herein."

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act to fix the maximum rate of tax to be levied for school purposes in all Inde-

pendent School Districts which include within their limits a city which has more than seven thousand, eight hundred and fifty (7,850) population, and fewer than eight thousand (8,000) population, according to the last preceding Federal Census, whether under General or Special Law; repealing all laws in conflict herewith, both General and Special; and providing, further, that this Act shall not affect any such independent School District which at this time may have a larger authorized rate of taxation; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 668.

#### Art. 2792. [2862] County assessor for independent district

When a majority of the Board of Trustees of an Independent District prefer to have the taxes of their District assessed and collected by the County Assessor and Collector, or collected only by the County Tax Collector, same shall be assessed and collected by said County Officers and turned over to the Treasurer of the Independent School District for which such taxes have been collected. The property of such Districts having their taxes assessed and collected by the County Assessor and Collector may be assessed at a greater value than that assessed for County and State purposes, and in such cases the County Tax Assessor and

Collector shall assess the taxes for said District on separate assessment blanks furnished by said District and shall prepare the rolls for said District in accordance with the assessment values which have been equalized by a Board of Equalization appointed by the Board of Trustees for that purpose. If said taxes are assessed by a Special Assessor of the Independent District and are collected only by the County Tax Collector, the County Tax Collector in such cases shall accept the rolls prepared by the Special Assessor and approved by the Board of Trustees as provided in the preceding Article. When the County Assessor and Collector is required to assess and collect the taxes of Independent School Districts he shall respectively receive one per cent (1%) for assessing, and one per cent (1%) for collecting same. As amended Acts 1937, 45th Leg., p. 637, ch. 312, § 1.

Amendment of 1937, effective May 13, 1937, declared an emergency and provided that the act should take effect from and after its passage.

Section 3 of the amendatory act of 1937

its passage.

#### Art. 2792a. Assessment at fair market value or intrinsic value

No property shall be assessed for taxes at a valuation greater than its fair market value, and if there is no market value, then no greater than its intrinsic value. Acts 1937, 45th Leg., p. 637, ch. 312, § 2.

Effective May 13, 1937.

#### Art. 2797. Teachers' homes

Any Common School District or Independent School District, whether created by Special Act of the Legislature or by vote of the people, and any City or Town which has assumed control of its Public Schools, may issue serial coupon bonds in the same manner as provided by law for the issuance of other bonds to build and equip school houses and to purchase sites therefor, for the purpose of purchasing or building a teachers' home and for purchasing land in connection therewith, provided no bonds shall be issued to provide a home in a District employing fewer than two teachers in a single school; and no bonds shall be issued for such purpose except by a majority vote of the property taxpayers qualified to vote in such district. As amended Acts 1937, 45th Leg., p. 704, ch. 353, § 1.

Amendment of 1937 effective May 15, 1937, declared an emergency and provided that the Act should take effect from and after its passage.

Section 2 of the amendatory act of 1937

its passage.

#### [Art. 2802e. Construction and mortgaging of gymnasia, stadia, etc. by independent districts authorized; self-liquidating]

Sec. 5. No contract, bond or note, or other evidence of indebtedness authorized to be issued or executed under this Act, shall be issued or executed after the expiration of the 31st day of the month of December, 1937. [As amended Acts 1937, 45th Leg., p. 1288, ch. 479, § 1.]

Amendment of 1937, effective June 9, 1937, declared an emergency and provided that the Act should take effect from and after its passage.

Section 2 of the amendatory act of 1937

its passage.

#### Art. 2802e—1. Construction and mortgaging of gymnasia, stadia, etc., by independent districts authorized; self-liquidating; proceedings validated

Section 1. All independent school districts, and all cities which have assumed the control of the public schools situated therein, shall have power to build or purchase buildings and grounds located within

or without the district or city, for the purpose of constructing gymnasia, stadia, or other recreational facilities, and to mortgage and encumber the same, and the income, tolls, fees, rents, and other revenues therefrom, and everything pertaining thereto, acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase or to construct, or to purchase and construct the same, including the purchase of equipment and appliances for use therein, and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district or city, but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district or city, to issue bonds for any other purpose authorized by law; provided that no election for the issuance of the bonds herein authorized shall be necessary, but the same may be authorized by a majority vote of the board of trustees of such independent school district or the governing body of such city.

Sec. 2. Projects financed in accordance with this law are hereby declared to be self-liquidating in character and supported by charges other than taxation.

Sec. 3. Such bonds shall be payable from the net revenues of the project together with all future extensions or additions thereto or replacements thereof, and the governing body of such school district, or city, shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenue, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses a sufficient amount of the revenues remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds plus a reasonable amount as a margin for safety. Such fund shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose.

Sec. 4. Every bond issued or executed under this law shall contain the following clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Such bonds shall be presented to the Attorney General for his approval as is provided for the approval of other school bonds and in such cases the bonds shall be registered by the State Comptroller as in the case of other school bonds.

Sec. 5. No bonds authorized to be issued or executed under this Act, shall be issued or executed after the expiration of two (2) years from the effective date of this Act.

Sec. 6. No land upon which is situated any of the school improvements other than as described herein shall ever be subject to the payment of any indebtedness created hereunder, nor shall any encumbrance ever be executed thereon.

Sec. 7. That all acts performed, proceedings had and contracts executed by school districts to which this Act is applicable, and by the governing bodies thereof, which acts, proceedings and contracts were unauthorized by law at the time of their performance or execution, but

which would have been authorized under the terms of this Act had the same been in force at such time, are hereby validated, ratified, approved and confirmed in all respects as fully as though they had been duly and legally performed, had and executed in the first instance. Acts 1939, 46th Leg., p. 235.

Effective March 25, 1939.

Section 8 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing independent school districts and cities which have assumed the control of public schools situated therein to build or purchase buildings and grounds located within or without the district or city, for the purpose of constructing gymnasias, stadia, or other recreational facilities, and to mortgage and encumber the same, and the income thereof, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase or construct or to purchase and construct the same; providing that the purchaser shall have a franchise to operate same in case of foreclosure; providing that no such obligation shall ever be a debt of any such school district or city, but solely a charge upon the property so encumbered; providing that no election for the issuance of such bonds shall be necessary; providing that such project shall be deemed self-liquidating in char-

acter; providing that the cost of maintaining and operating the project shall be a first charge against the revenues of the project; providing that such bonds shall be payable from the net revenues of the project, together with all future extensions or additions thereto, or replacements thereof; providing for the payment of said bonds; providing that the holder of said bonds shall never have the right to demand payment thereof out of any funds raised or to be raised by taxation; providing that said bonds shall be approved by the Attorney General and registered by the State Comptroller; providing that no bonds authorized shall be issued or executed after the expiration of two (2) years from the effective date of this Act; providing that no land upon which is situated school improvements shall be subject to the indebtedness created hereunder; validating Acts heretofore performed by school districts; enacting provisions incident and relating to the subject and purpose of this Act; and declaring an emergency. Acts 1939, 46th Leg., p. 285.

**Art. 2802f—1. Additional powers conferred on districts having large percentage of delinquent taxes; borrowing money; pledging taxes**

Section 1. In addition to the powers conferred by other Acts, the Board of Education or other governing body of any school district having at any time outstanding delinquent taxes (other than bond taxes) levied within the preceding six years exceeding Nine Hundred Thousand Dollars (\$900,000) and not less than sixty (60) per centum of its current tax levy for maintenance and operation, may borrow money for school purposes in an amount not exceeding fifty (50) per centum of the total amount of all delinquent taxes, excluding those mentioned in Section 7 hereof, and issue notes or certificates of indebtedness therefor in anticipation of the collection of such delinquent taxes. In the resolution authorizing the issuance of said notes or certificates, the governing body of any such district shall prescribe the rate of interest and the serial maturities thereof, the maximum maturity date not to exceed fifteen (15) years, and rights of redemption prior to maturity, if any, as to such notes scheduled to mature on and after five (5) years from their date. Except as herein otherwise provided, such taxes shall be deemed to be irrevocably pledged to the payment of such notes or certificates and shall as collected be paid into a separate fund or funds to be used solely for such payment until all such notes or certificates have been paid. The proceeds of said notes shall be applied first to the payment of any valid indebtedness or renewal thereof of such district previously incurred in anticipation of the collection of such delinquent taxes, and the balance of such proceeds shall be applied to other school purposes as the Board of Education or other governing body of the school district may authorize and provide.

**Payment of delinquent taxes collected into special fund in depository**

Sec. 2. Whenever any notes or certificates of indebtedness have been issued under this Act, and so long as any of them may be outstanding, the officer charged with the collection of such delinquent taxes shall pay the same to the legal depository of the district, to be deposited and held in a special fund for the payment of such notes or certificates, and except as herein otherwise provided, no part thereof shall be applied or used for any other purposes.

**Pledge of delinquent taxes to special fund**

Sec. 3. The resolution authorizing such notes or certificates may provide for the transfer from such special fund of any accumulation of moneys not reasonably necessary to secure and assure their payment, but no such transfer shall be made except in consideration of the pledge of additional delinquent taxes as herein provided. At any time after the end of the fiscal year in which such notes or certificates are issued, or at or after the end of or during any later fiscal year, as and when current taxes become delinquent, the Board of Education or any other governing body of the district may pledge to such special fund the delinquent taxes of such later year in such manner as may be prescribed in such authorizing resolution. Concurrently with the pledging of such revenues, if the notes or certificates remaining unmatured or unpaid less the moneys in the special fund for their payment are less than fifty (50) per cent (or such higher percentage as may be prescribed in the resolution authorizing such notes or certificates) of the delinquent taxes of the six (6) next preceding fiscal years so pledged, such governing body may by resolution make the transfer of money from such fund to its general fund; provided, however, that no such transfer shall be made at any time unless all the taxes then delinquent of the later years not included in the original pledge under Section 1, including all delinquent taxes of the next preceding fiscal year shall have been duly pledged to such fund and all other indebtedness chargeable against such delinquent taxes shall have been paid, and unless there shall be and remain in such special fund a sum sufficient to pay the principal and interest on such notes or certificates to fall due within one year thereafter, which sum shall also be not less at any time than an amount which, multiplied by the number of full years then remaining until the last of such notes or certificates become due, will equal the amount of notes or certificates then outstanding; provided, however, to make it clear, no such transfer of money from the special fund shall be permitted unless, after such transfer, the pledged delinquent taxes for the preceding six years shall be at least twice the amount of the outstanding certificates or notes less the amount of money left in the special fund. In addition to any requirements of such authorizing resolution, on the occasion of each such transfer of money from the special to the general fund, the governing body of such district shall adopt a resolution making the findings of fact which are in this section made a prerequisite to such transfer, directing the transfer of such money and authorizing its proper officers to issue proper checks or vouchers to accomplish the purpose. The resolution authorizing such notes or certificates may prescribe the form of resolution to effect such pledge of later delinquent taxes and the form of proof to be furnished the legal depository showing compliance with this Act and with such resolution. Such proof with certified copy of such resolution shall be filed with the legal depository of such district, as authority for and shall be filed with the legal depository of such district, prior to the transfer of such money. Upon receipt of and in accepting such instrument and by such transfer of funds, said legal depository shall in-

cur no liability other than that imposed on such depository by other laws, or by the authorizing resolution, or for its own gross neglect. Such proof and such certified copy shall be available, for examination by the holder of any such certificate or note at all reasonable times, upon written request made of such legal depository. Thereafter all of such delinquent taxes additionally pledged shall be subject to the provisions of this Act in all respects as though they had been included in the original pledge under Section 1 of this Act. The officer charged with the collection of delinquent taxes shall be charged with knowledge of such pledge or transfer and all moneys collected by him and any additional delinquent taxes so pledged shall be paid into such special fund, as above provided. So long as the original pledge of said taxes remains intact, and so long as such subsequent pledges of delinquent taxes for later years and concomitant transfers of money from said special fund to the general fund are made in strict compliance with the provisions of this section, the holder or holders of such notes or certificates shall never have the right to demand payment thereof out of any fund other than such pledged delinquent taxes, but in all other respects such notes or certificates shall constitute obligations of the district and nothing herein shall prevent the use of general funds when necessary for their payment.

#### **Borrowing money payable out of current revenues; renewal of loans**

Sec. 4. Nothing herein shall prevent the district from borrowing funds in any year payable out of the revenues of such year and chargeable to such revenues, including any revenues that may be derived by transfer from such special fund under Section 3 but loans chargeable against the taxes of any year shall be paid or if so provided in the authorizing resolution described in Section 1 the lien on current taxes securing same released before the taxes for such year when delinquent may be pledged under Section 3. For the purpose of this Act, the district may pay or renew any such current loans by new loans against the revenues of the succeeding year. But nothing in this Act shall prevent the district from pledging its current revenue or impair any lien so created.

#### **Interest and penalties**

Sec. 5. Interest and penalties on delinquent taxes shall be deemed a part of such taxes for the purpose of this Act. Should any delinquent taxes including interest and penalties be cancelled, waived, released, or reduced either by the district or in any other way, with or without its consent, the amount of the loss so sustained shall be paid by the district to the special fund provided in Section 2 out of funds not otherwise pledged to such special fund; provided, that in lieu of such payment the district may file with the legal depository a resolution and proof sufficient in form and effect to authorize the release of such moneys (if paid) from such fund under Section 3.

#### **Existing pledge of delinquent taxes**

Sec. 6. Should there be an existing pledge at the time of the adoption of the original authorizing resolution of not exceeding ten (10) per cent of the delinquent taxes to secure indebtedness which in the judgment of the governing body is otherwise adequately secured, the resolution authorizing such notes or certificates may provide that such indebtedness, notwithstanding such pledge, shall not for purpose of this Act be deemed chargeable against such delinquent taxes and nothing in this Act or done under it shall be deemed to impair such prior charge.



**Definitions**

Sec. 7. Taxes levied in any year to pay principal and interest of bonds which taxes subsequently become delinquent for the purpose of this Act shall not be included in the terms "taxes" or "revenues" or "delinquent taxes" as such herein.

**Violation of requirement to pay moneys into special fund**

Sec. 8. If and as provided in the resolution authorizing such notes or certificates, in the event of the violation of this Act or of any covenants made under it by which violation any moneys required to be paid into the special fund are not so paid or any moneys in such fund are applied, used or transferred except as provided by this Act, then in addition to the other rights and remedies hereunder the officer or officers required to collect any taxes or to pay any revenue to the district shall pay such taxes when collected or such revenues to the legal depository to be deposited and held in the special fund provided for the payment of such notes or certificates until the amount so paid (excluding delinquent taxes pledged) shall equal the moneys not so paid when required or the moneys so wrongfully applied, used or transferred with interest at the rate of six (6) per cent per annum from the date of such violation. The legal depository may enforce compliance with this Act but shall not be required to do so. Any holder of such notes or certificates may enforce compliance with this Act on behalf of all the holders and may intervene in any action taken by the legal depository or by any other holder. Any reasonable expense properly incurred by the legal depository or by any such holder or holders shall, if the violation be established, constitute a charge on such special fund junior to the payment of the notes or certificates and no moneys shall thereafter be transferred from such special fund under Section 3 until such expenses are paid, or the amount claimed therefor is escrowed pending the determination of the reasonableness or propriety of such expense.

**Notes or certificates as security for deposits of public funds**

Sec. 9. Such notes or certificates shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts and political sub-divisions of and in the State of Texas in the same manner and on the same basis that bonds of independent school districts are eligible for such purpose.

**Provisions cumulative**

Sec. 10. The provisions of this Act shall be cumulative of all other laws, general or special, and shall not be interpreted as repealing any existing powers in such school districts; but in the event that any of the provisions of this Act are in conflict with the provisions of any other law, general or special, the provisions hereof shall take precedence and shall prevail to the extent of such conflict. Acts 1939, 46th Leg., p. 287.

Effective April 26, 1939.

Section 11 of the act of 1939 provided: "If any provision or section of this Act is held unconstitutional or invalid, the same shall not operate to defeat the whole Act, but all other parts shall stand and remain in full force and effect."

Section 12 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act conferring additional powers on school districts having a relatively large

percentage of delinquent taxes, including power to borrow money and issue obligations secured by such taxes and to make supplementary pledges of taxes hereafter becoming delinquent to secure the release of funds pledged for such obligations; providing that the provisions of this Act may be cumulative of all other laws, but that in the event of conflict, the provisions hereof shall prevail; enacting provisions incident to and relating to the subject; and declaring an emergency. Acts 1939, 46th Leg., p. 287.

**Art. 2802g. Tax rate in independent district including city of 13,700 to 13,800**

Section 1. In any Independent School District having and including within its limits a City or Town which, according to the then latest Federal Census, had a population of not fewer than thirteen thousand seven hundred (13,700) and not more than thirteen thousand eight hundred (13,800) inhabitants, the School District Trustees of the Independent School District, whether such Independent School District was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property of the District;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such Districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property of the District, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of the bonds which such Districts are empowered to issue for such purpose.

(3) The amount of maintenance tax, together with the amount of bond tax of any such District shall never exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property within such District; and if the rate of bond tax, together with the rate of maintenance tax voted in the District shall at any time exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 (\$1.50) Dollars.

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by the majority of the votes cast at an election held in the District for such purpose, at which none but property taxpaying qualified voters of such District shall be entitled to vote.

Sec. 2. All Laws and parts of Laws, both General and Special, in conflict herewith are hereby repealed. Acts 1937, 45th Leg., p. 480, ch. 243.

Effective May 1, 1937.

Section 3 of this act declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act to fix the maximum rate of tax to be levied for school purposes in all Independent School Districts which include within their limits a City or Town which

according to the latest Federal Census had a population of not fewer than thirteen thousand seven hundred (13,700), and not more than thirteen thousand eight hundred (13,800) inhabitants, whether organized under General or Special Law; repealing all laws in conflict herewith, both General and Special, and declaring an emergency. Acts 1937, 45th Leg., p. 480, ch. 243.

**Art. 2802h. Maximum tax rate in independent districts including city or town having certain population**

In any Independent School District having and including within its limits a city or town, which according to the latest Federal Census, contained a population of not less than three thousand nine hundred forty-three (3,943) and not more than three thousand nine hundred forty-five (3,945), the school district trustees of such Independent School District, whether such Independent School District was created under the General Laws or any Special Law or Laws, shall have the power

to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property of the District;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such Districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property of the School District, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such Districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such District shall never exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property within such Districts; and if the rate of bond tax, together with the rate of maintenance tax voted in the District shall at any time exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 (\$1.50) Dollars;

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the District for such purpose, at which none but property tax-paying qualified voters of such District shall be entitled to vote. [Acts 1937, 45th Leg., p. 691, ch. 348, § 1.]

Effective May 15, 1937.

Section 2 of this act repeals all conflicting laws and parts of laws, both General and Special. Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to fix the maximum rate of tax to be levied for school purposes in all Independent School Districts which include

within their limits a city or town which according to the latest Federal Census had a population of not less than three thousand nine hundred forty-three (3,943) and not more than three thousand nine hundred forty-five (3,945), whether organized under General or Special Law, repealing all laws in conflict herewith, both General and Special, and declaring an emergency. Acts 1937, 45th Leg., p. 691, ch. 348.

**Art. 2802i. Tax rate in independent districts including city of 400 to 450 population in counties of 30,400 to 30,600 population**

Section 1. In any independent school district having and including within its limits a city or town which according to the last Federal Census had a population of not less than four hundred (400) and not more than four hundred and fifty (450) inhabitants, and in counties having not less than thirty thousand four hundred (30,400) and not more than thirty thousand six hundred (30,600) inhabitants according to the last Federal Census, the school district trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Seventy-

five (75¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and 50/100 (\$1.50) Dollars;

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax-paying qualified voters of such district shall be entitled to vote.

Sec. 1a. In any common school district wherein a public free school building may have burned or may burn or be destroyed by fire, such common school district being located within a county having a population of not less than thirteen thousand six hundred thirty (13,630), nor more than thirteen thousand six hundred ninety-nine (13,699), according to the last preceding or any future Federal Census, whether such common school district was created under the General Laws or any Special Law or Laws, the Commissioners' Court of such common school district shall have the power to levy and cause to be collected the annual tax herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Seventy-five (75¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal on bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 (\$1.50) Dollars.

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax-paying qualified voters of such district shall be entitled to vote; [Acts 1937, 45th Leg., 1st C.S., p. 1758, ch. 12.]

Effective July 7, 1937.

Section 2 repeals all conflicting laws and parts of laws, both General and Special.

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## Title of Act:

An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts which include within their limits a city or town which according to the last Federal Census had a population of not less than four hundred (400) and not more than four hundred and fifty (450) inhabitants, and in counties having not less than thirty thousand four hundred (30,400) and not more than thirty thousand six hundred (30,600) inhabitants according to the last Federal Census, whether organized under General or Special Laws; fixing the maximum of tax to be levied for school purposes

in common school districts wherein a public free school building may have been destroyed by fire, or may be destroyed by fire, provided such districts lie within a county having a population of not less than thirteen thousand six hundred and thirty (13,630) nor more than thirteen thousand six hundred and ninety-nine (13,699) inhabitants according to the last preceding or any future Federal Census, whether such common school district was organized under General or Special Laws, repealing all laws in conflict herewith, both General and Special; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1758, ch. 12.]

**Art. 2802i—1. Maximum tax rate in independent or independent consolidated districts including city or town of 4,130 to 4,180 population**

1. In any independent school district, and/or independent consolidated school district, having and including within its limits a city or town which according to the last preceding Federal Census had a population of not fewer than four thousand, one hundred and thirty (4,130) and not more than four thousand, one hundred and eighty (4,180) inhabitants, the school district trustees of the independent school district, and/or consolidated independent school district, whether such district was created under the General Law or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such district and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such district is empowered to issue for such purposes.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents (\$1.50).

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property-owning tax-paying qualified voters of such district shall be entitled to vote. Acts 1939, 46th Leg., Spec.L., p. 662, § 1.

Effective Feb. 17, 1939.

Section 2 of this act repeals all conflicting laws and parts of laws both General and Special.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

## Title of Act:

An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts, and/or independent consolidated school districts which include within their limits a city or town which according to the last preceding Fed-

eral Census had a population of not fewer than four thousand, one hundred and thirty (4,130) and not more than four thousand, one hundred and eighty (4,180) inhabitants, whether organized under Gen-

eral or Special Law; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 662.

**Art. 2802i—2. Maximum tax rate in independent or independent consolidated districts including city or town of 1,050 to 1,055 population**

Section 1. In any independent school district, and/or independent consolidated school district, having and including within its limits, a city or town which according to the then latest preceding Federal Census, had a population of not fewer than one thousand and fifty (1,050) and not more than one thousand and fifty-five (1,055) inhabitants, the school district trustees of the independent school district, and/or consolidated independent school district whether such district was created under the General Law or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed One Hundred (100) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purposes.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents (\$1.50).

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property-owning taxpaying qualified voters of such district shall be entitled to vote. Acts 1939, 46th Leg., Spec.L., p. 657.

Effective Feb. 8, 1939.

Section 2 of this act repeals all conflicting laws and parts of laws both General and Special.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts, and/or independ-

ent consolidated school districts which include within their limits a city or town which according to the then latest preceding Federal Census had a population of not fewer than one thousand and fifty (1,050) and not more than one thousand and fifty-five (1,055) inhabitants, whether organized under General or Special Law; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 657.

**Art. 2802i—3. Maximum tax rate in independent districts including city or town of 4,450 to 4,485 population**

In any independent school district having and including within its limits a city or town which according to the then latest Federal Census had a population of not fewer than four thousand, four hundred fifty (4,450) and not more than four thousand, four hundred eighty-five (4,485) inhabitants, the school district trustees of the independent school district, whether such district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents (\$1.50) on the One Hundred (\$100.00) Dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents (\$1.50) on the One Hundred (\$100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents (\$1.50) on the One Hundred (\$100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents (\$1.50).

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property owning, tax-paying, qualified voters of such district shall be entitled to vote. Acts 1939, 46th Leg., Spec.L., p. 663, § 1.

Effective April 24, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to fix the maximum rate to be levied for school purposes in all independent school districts which include within their limits an incorporated city or town which

according to the then latest Federal Census had a population of not fewer than four thousand, four hundred fifty (4,450) and not more than four thousand, four hundred eighty-five (4,485) inhabitants, whether organized under General or Special Law; repealing all Laws in conflict herewith, both General and Special and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 663.

**Art. 2802i—4. Maximum tax rate in independent districts including city or town of 6,750 to 6,850 population**

In any independent school district having and including within its limits a city or town which, according to the latest Federal Census, had a population of not fewer than six thousand, seven hundred and fifty (6,750) and not more than six thousand, eight hundred and fifty (6,850) inhabitants, the School District Trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the pow-

er to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Twenty-five Cents (\$.125) on the one hundred dollars valuation of taxable property in the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of the bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond of any such district shall never exceed One Dollar and Twenty-five Cents (\$.125) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Twenty-five Cents (\$.125) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Twenty-five Cents (\$.125);

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by the majority of the votes cast at an election held in the district for such purposes, at which none but property-taxpaying qualified voters of such district shall be entitled to vote. Acts 1939, 46th Leg., Spec.L., p. 666, § 1.

Effective April 18, 1939.

Section 2 of the act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts which include

within their limits a city or town which according to the latest Federal Census had a population of not fewer than six thousand, seven hundred and fifty (6,750) and not more than six thousand, eight hundred and fifty (6,850) inhabitants, whether organized under General or Special Law; repealing all laws in conflict herewith, both General and Special; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 666.

**Art. 2802i—5. Tax rate in independent districts in counties of 24,060 to 24,070, having scholastic population of 760 to 770; election**

Section 1. In all independent school districts which have a scholastic population of not more than seven hundred and seventy (770), and not less than seven hundred and sixty (760) scholastics according to the 1938-1939 public school directory of the State Department of Education, and being in counties containing not more than twenty-four thousand and seventy (24,070), and not less than twenty-four thousand and sixty (24,060) population according to the last Federal Census, and which school districts have One Dollar (\$) tax for school purposes, and being a tax for both bonds and maintenance.

The school district trustees of the independent school districts provided for in this Act, whether created under General or Special Laws, shall have the power to levy, and cause to be collected, the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of public schools, including bond retirement and interest thereon, there shall be levied and collected an ad valorem tax not exceeding in any one year One Dollar (\$) on the one hundred dollars valuation of taxable property of the districts as fixed by the board of trustees for such districts.



(2) For the purchase, construction, repair and/or equipment of the public free school buildings within the limits of such districts, and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, shall be levied for any one year; such tax to be for the payment of current interest on, and provide a sinking fund sufficient to pay the principal of, the bonds which such districts are empowered to issue for such purposes.

(3) The amount of maintenance tax together with the amount of bond tax of any such district shall never exceed One Dollar (\$1) on the one hundred dollars valuation of taxable property within such district; providing, however, that if the rate of the bond tax shall be increased beyond Fifty (50) Cents on the one hundred dollars valuation of property within such district, then, and in that event, the maintenance tax rate in such district shall automatically be reduced to an amount where the bond tax and the maintenance tax together shall not aggregate a sum in excess of One Dollar (\$1) on the one hundred dollars valuation of all property in such districts for any one year.

Sec. 2. The taxes hereinabove imposed shall never be levied, collected, abrogated, diminished, or increased, and no bond or bonds shall be issued thereunder, until such action has been authorized by a majority of the qualified property taxpaying voters of such districts, voting at an election to be held for that purpose; and providing that for the purpose of calling such election, the school board trustees of such districts shall, upon a petition of twenty (20) resident, qualified, taxpaying voters of such districts, order an election to determine whether said districts shall levy such taxes in the mode and manner as herein provided.

Sec. 3. Said district, when a majority of the resident, qualified, taxpaying voters shall have by majority determined in favor of the issuance of bonds and levying the tax therefor, and providing for the maintenance taxes hereinabove set out, said school board trustees of such district shall have the right to levy, assess, and collect therefor a bond rate as in this Act provided, and a maintenance rate as hereinabove set out; provided, however, that this Act shall be in force for a period of time not to exceed five (5) years from the effective date of issuance of said bonds and levying the tax therefor.

Sec. 4. This Act shall be cumulative of all laws on the Statute, and shall be deemed to be an addition to the authority now provided by law in such cases. Acts 1939, 46th Leg., Spec.L., p. 669.

Effective April 18, 1939.

Section 5 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act making provisions in certain independent school districts in this State, for an election to determine tax rate to be levied for payment of bonds and interest thereon; to determine tax rate for maintenance in such districts; providing for levy of such taxes; providing for aggregate amount of such

levy; providing that when the bond tax exceeds the levy of Fifty (50) Cents on the one hundred dollars valuation, that the maintenance tax shall be reduced in an amount equal to the sum added to the bond tax; providing the Act shall be in effect for a period of not to exceed five (5) years; making this Act cumulative of all laws on the Statute books in force as of this date; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 669.

**Art. 2802i—6. Maximum maintenance and bond tax rate in independent districts in counties of 12,190 to 12,200 and including a town of not less than 2,000**

All Independent School Districts in counties having a population of not less than twelve thousand one hundred ninety (12,190) and not more than twelve thousand two hundred (12,200) inhabitants accord-

ing to the last preceding Federal Census containing in such Independent School District a town of less than two thousand (2,000) inhabitants according to the last preceding Federal Census, are authorized to levy a tax for school maintenance and bond purposes the maximum of which for both of such purposes shall be One Hundred and Seventy-five (175¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property; said tax to be authorized, assessed, levied and collected under the provisions of the General Laws. Provided, however, of such One Hundred and Seventy-five (175¢) Cents on the One Hundred (\$100.00) Dollars valuation maximum the bond tax shall never exceed Fifty (50¢) Cents on the One Hundred (\$100.00) Dollars assessed valuation of taxable property. Acts 1939, 46th Leg., Spec.L., p. 661, § 1.

Effective May 8, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to provide for the maximum maintenance and bond tax rate for school purposes in all Independent School Districts in counties having a population of not less than

twelve thousand one hundred ninety (12,190) and not more than twelve thousand two hundred (12,200) inhabitants according to the last preceding Federal Census, and containing in such Independent School District a town of less than two thousand (2,000) inhabitants; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 661.

**Art. 2802i—7. Tax rate fixed in certain districts**

In any independent school district having and including within its limits a city or town which according to the latest Federal Census had a population of not fewer than six thousand, two hundred (6,200) and not more than six thousand, two hundred and twenty-five (6,225) the school district trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such district and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents (\$1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents (\$1.50);

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property taxpaying

qualified voters of such district shall be entitled to vote. Acts 1939, 46th Leg., Spec.L., p. 665, § 1.

Effective May 17, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts which include within their limits a city or town which ac-

ording to the latest Federal Census had a population of not fewer than six thousand, two hundred (6,200) and not more than six thousand, two hundred and twenty-five (6,225) whether organized under General or Special Law; repealing all laws in conflict herewith, both General and Special; providing for the holding of elections authorizing tax levy; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 665.

**Art. 2802i—8. Maximum tax rate in certain independent school districts**

In any independent school district having and including within its limits a city or town which, according to the then latest Federal Census, had a population of not fewer than seventeen hundred twenty-one (1,721) and not more than seventeen hundred fifty-one (1,751) inhabitants, and in all independent school districts having territory located in as many as three (3) counties and containing a county seat town with a population of not less than four thousand two hundred (4,200) and not more than four thousand two hundred seventy-five (4,275) as shown by the last preceding or any future Federal Census, the governing body thereof shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed Ninety One-hundredths (\$0.90) of a Dollar on the One Hundred (\$100.00) Dollars valuation of taxable property in the district;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such district and the purchase of necessary sites therefor, an ad valorem tax not to exceed Sixty One-hundredths (\$0.60) of a Dollar on the One Hundred (\$100.00) Dollars valuation of taxable property in the district; such tax to be for the payment of the current interest on and to provide a sinking fund sufficient to pay the principal of the outstanding bonds of such district and any bonds hereafter lawfully issued;

(3) The amount of maintenance tax together with the amount of bond tax of any such district shall never exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax together with the rate of maintenance tax voted or levied in any year in the district shall at any time exceed One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 (\$1.50) Dollars.

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bonds shall be issued hereunder, until such action has been authorized by a majority vote of the qualified voters in said district cast at an election held therein for such purposes. Acts 1939, 46th Leg., Spec.L., p. 659, § 1.

Effective June 2, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws; section

3 declared an emergency and provided that the Act should take effect from and after its passage.

## Title of Act:

An Act to fix the maximum rate of tax to be levied for school purposes in all independent school districts which include within their limits a city or town which, according to the then latest Federal Census, had a population of not fewer than seventeen hundred twenty-one (1,721) and not more than seventeen hundred fifty-one (1,751) inhabitants, and in all independent school districts having territory located in as many as three (3) counties and containing a county seat town with a population of not less than four thousand two hundred (4,200) and not more than four thousand two hundred seventy-five (4,275) as shown by the last preceding or any future Federal Census; fixing the maximum tax rate which may be levied

in said districts for all purposes at One and 50/100 (\$1.50) Dollars on the One Hundred (\$100.00) Dollars valuation of all taxable property; providing a tax of not to exceed Ninety (90¢) Cents on the One Hundred (\$100.00) Dollars valuation for the maintenance of public schools, and providing a tax of not to exceed Sixty (60¢) Cents on the One Hundred (\$100.00) Dollars valuation for the payment of principal, interest and sinking fund for the bonded indebtedness; providing that no tax shall be levied until such tax shall have been authorized by a majority vote of the voters of such district voting at an election held for such purpose; repealing all laws in conflict, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 659.

Art. 2802i—9. Maximum maintenance and bond tax rate; certain independent school districts of 51,750–52,000

All independent school districts in counties having a population of not less than fifty-one thousand, seven hundred and fifty (51,750) and not more than fifty-two thousand (52,000) inhabitants, according to the last preceding Federal Census, which independent school district in such counties contains a city therein of not less than twenty-seven thousand, seven hundred and forty (27,740) and not more than twenty-seven thousand, eight hundred (27,800) inhabitants, according to the last preceding Federal Census, are authorized to levy a tax for school maintenance and bond purposes, the maximum of which for both of such purposes shall be One Dollar and Twenty-five Cents (\$1.25) on the one hundred dollars valuation of taxable property; said tax to be authorized, assessed, levied, and collected under the provisions of law as now provided. Acts 1939, 46th Leg., Spec.L., p. 671, § 1.

Filed without Governor's signature May 19, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of law; section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## Title of Act:

An Act to provide for the maximum maintenance and bond tax rate for school purposes in all independent school districts in counties having a population of not less than fifty-one thousand, seven hundred

and fifty (51,750) and not more than fifty-two thousand (52,000) inhabitants, according to the last preceding Federal Census, and containing in such independent school district a city of not less than twenty-seven thousand, seven hundred and forty (27,740) and not more than twenty-seven thousand, eight hundred (27,800) inhabitants according to the last preceding Federal Census; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 671.

## 5: ADDITIONS AND CONSOLIDATIONS

Art. 2806b. Validation of county line independent school districts formed by consolidation with contiguous common school districts

Section 1. That all county line independent school districts in this State heretofore attempted to be organized and established, and now functioning as such, and recognized by either State or county authorities as such school districts, and which were attempted to be organized and established by a vote of the people at an election held in each district affected for the purpose of consolidating an existing county line independent school district with an existing contiguous common school district, and at which election there was an affirmative vote in each school

district in favor of such consolidation, are hereby validated in all respects, as though such district or districts had been duly and legally established in the first instance, notwithstanding the fact that such election on the question of consolidation so held in such existing independent school district or districts may have been ordered, notices thereof given, and the results thereof declared by a Board of Trustees of such existing county line independent school district or districts instead of by the Commissioners Court as provided by Article 2806 of the Revised Civil Statutes of Texas, of 1925.

**Elections, tax levies, contracts, and other acts of Board of Trustees validated**

Sec. 2. All acts of the Board of Trustees of any such school districts in connection with the ordering of an election or elections and declaring the results thereof, and in attempting or purporting to levy taxes for and on behalf of such school district or districts, and all contracts and other acts of such Board of Trustees, otherwise legal, heretofore made on behalf of such district or districts are hereby in all things validated.

**Taxation**

Sec. 3. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of taxes as is now being levied, assessed, and collected therein, and heretofore authorized or attempted to be authorized by any act or acts of said districts in the same manner as if said district or districts had been duly and legally authorized and established in the first instance.

**Act inapplicable to districts in litigation before termination thereof**

Sec. 4. This Act shall not apply to any district, the organization or creation of which is now involved in litigation; provided, however, if and when such litigation shall be finally terminated in a manner favorable to such district, then this Act shall apply thereto.

**Partial invalidity**

Sec. 5. If any part or Section of this Act shall be declared unconstitutional or invalid for any reason, such partial invalidity shall not affect the other provisions of this Act. Acts 1937, 45th Leg., p. 660, ch. 328.

Effective May 13, 1937.

Section 6 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate the organization and creation of all county line independent school districts heretofore formed under certain conditions by the consolidation of an existing county line independent district with a contiguous common school district; validating all acts of the Board of Trustees of such existing county line independent school districts in ordering and declaring the results of an election or

elections held in such county line independent school districts on the question of such consolidation; validating all proceedings and acts of the Board of Trustees of such districts; validating all tax levies made in behalf of said districts; authorizing and empowering all school districts mentioned in this Act to levy, assess, and collect the same rate of tax as is now being levied, assessed, and collected therein, and heretofore authorized or attempted to be authorized by any act or acts of said districts; providing for certain exemptions; containing a saving clause; and declaring an emergency. [Acts 1937, 45th Leg., p. 660, ch. 328.]

**Art. 2808. Consolidation: Trustees**

Contracts by trustees of common and consolidated districts with principals, su-

perintendents, and teachers, see art. 2750a, ante.

## 6. DISTRICTS IN LARGE COUNTIES

## Art. 2815g—1a. Provisions of act inapplicable to counties of over 290,000 and less than 320,000

Provided further that in all counties having more than two hundred and ninety thousand (290,000) and less than three hundred and twenty thousand (320,000) population according to the last preceding Federal Census, the provisions of the foregoing Articles, 2815a, 2815b, 2815c, 2815d, 2815e, 2815f, 2815g, and 2815g-1, shall not apply, and the provisions of said Articles shall be without force and effect.

In all said counties having more than two hundred and ninety thousand (290,000) and less than three hundred and twenty thousand (320,000) population according to the last preceding Federal Census, the members of the County Board of School Trustees of the public schools of the county shall receive Five Dollars (\$5) per day for their services in attending meetings, inspecting schools, and performing the duties imposed upon them by law, to be paid out of the General Fund of the county by warrants drawn on order of the Commissioners Court, after approval of the account by the County Superintendent. Acts 1937, 45th Leg., p. 417, ch. 213, § 1.

Effective April 26, 1937.

Section 2 of this Act declared an emergency making the Act effective on and after its passage.

## [Art. 2815g—3. Validation of school districts]

Acts 1936, 44th Leg., 3rd C.S., p. 2036, ch. 494, validated transfer of territory to the Line District of Dickens County and designated the boundaries of the district. McAdoo Independent Consolidated County

## Art. 2815g—10. Validation of consolidation of contiguous independent school districts

Section 1. That all attempts to consolidate contiguous independent school districts lying in two or more counties, or either of which lies in two or more counties, be and the same are hereby validated in all respects, as though their consolidation had been duly and legally provided for and established in the first instance.

Sec. 2. All acts of the County Commissioners' Court of any county in this State ordering an election for the consolidation of an independent school district in such county or in two or more counties, with a contiguous independent school district in an adjoining county, or in two or more counties, including all orders of the Commissioners' Court of said county or counties declaring the results of any such election, and including all proceedings of every kind and character leading up to or taken in connection with said election or elections are hereby in all things validated, and said consolidated districts shall hereafter be known as a Consolidated County Line Independent School District, and such Consolidated County Line Independent School District shall have and possess all the rights and powers granted to an independent school district by the Constitution and Laws of the State of Texas, and shall be governed, controlled and operated by the law governing independent school districts lying wholly in one county; however, the management and control of said Consolidated County Line Independent School District shall be under the existing Board of Trustees of the oldest independent school district involved in the consolidations of said independent school districts, until the next regular election of trustees for the independent school districts, as provided by General Law, at which time the

said Consolidated County Line Independent School District shall elect a Board of seven trustees, whose powers, duties and terms of office shall be in accordance with the provisions of the General Law governing independent school districts, and the election for said trustees of said Consolidated County Line Independent School District shall be governed by the provisions of the General Law governing the election of trustees for independent school districts.

Sec. 3. The Board of Trustees having the management and control of said Consolidated County Line Independent School District is hereby authorized and empowered to levy, assess and collect the same rate of taxes as is now being levied, assessed and collected in each of said independent school districts, constituting a part of said Consolidated County Line Independent School District as theretofore authorized or attempted to be authorized by any act or acts of either of said independent school districts, until such rate of taxation is changed by an election in said Consolidated County Line School District, which election shall be held in accordance with the provisions governing such elections in independent school districts under the Constitution and Laws of the State of Texas.

Sec. 4. Provided that if any Section or part of the Section should be held unconstitutional it shall not affect the other provisions of this Act. Acts 1937, 45th Leg., p. 177, ch. 94.

Effective April 2, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to validate the consolidation of

contiguous independent school districts lying in two or more adjoining counties, and elections and proceedings in connection therewith, and to provide for their rights and powers as an independent school district, and declaring an emergency. [Acts 1937, 45th Leg., p. 177, ch. 94.]

#### Art. 2815g—11. Validating districts in counties of 98,000 to 100,000

Section 1. That the actions of any County Board of Trustees in this State for the purpose of creating independent school districts are hereby in all things validated as though they had been duly and legally established in the first instance.

Sec. 1a. This Act shall apply only to those counties having a population of ninety-eight thousand (98,000) to one hundred thousand (100,000), according to the last preceding Federal Census, and that no part of this Act shall affect any litigation of any district now pending.

Sec. 1b. The acts of the County Board of Trustees shall not be valid except those acts that are passed by four-fifths majority of the Board itself. Acts 1937, 45th Leg., p. 575, ch. 285.

Effective May 5, 1937.

Section 2 of this Act declared an emergency making the Act effective on and after its passage.

Title of Act:

An Act validating the creation and organization of independent school districts; validating the actions of any County Board of Trustees with reference to the creation

of school districts out of another independent school district; making this Act applicable to certain counties according to the last preceding Federal Census; providing that no part of this Act shall affect any litigation now pending, and that only acts passed by four-fifths majority of the County Board of Trustees shall be valid, and declaring an emergency. [Acts 1937, 45th Leg., p. 575, ch. 285.]

#### Art. 2815g—12. Validation of all school districts, acts of trustees, bonds, etc.

Section 1. All school districts, including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidat-

ed common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groups or annexations of whole districts or parts of districts by vote of the people residing in such districts or by action of County School Boards, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either State or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees in such districts ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in no wise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in no wise invalidate any of such proceedings or any bonds so issued by such districts.

All acts of the County Boards of Trustees of any and all counties in rearranging, changing, or subdividing such school districts or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected shall be validated by the passage of this Act.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed and collected therein and heretofore authorized or attempted to be authorized by any act, or acts of said districts, or by any Act, whether General or Special, of the Legislature.

Sec. 3. This law shall not apply to any district, the organization or creation of which, or consolidation or annexation of any territory in or to such district was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which is now involved in litigation, or the validity of the organization or creation of which or consolidation or annexation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section or part of this Act. Acts 1937, 45th Leg., p. 833, ch. 409.

Effective May 28, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to validate the organization and creation of all school districts, including common school districts, independent



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, whether created by General or Special Law or by County Boards of Trustees; providing no transfer of territory is validated by the Act unless authorized by an affirmative vote of voters in such district, and providing this Act shall not validate the organization or creation of any district, or consolidation or annexation of any district in or to such district where the same is now involved in litigation or where suit or litigation is filed with ref-

erence thereto within forty-five (45) days after the effective date of this Act; validating the Acts of said County Boards of Trustees and Boards of Trustees of such districts; validating all proceedings and Acts of said Boards of Trustees; validating all bonds voted, authorized and or now outstanding of said Districts; validating all tax levies made in behalf of said Districts; authorizing and empowering all school districts mentioned in this Act to levy, assess, and collect the same rate of taxes as is now being levied, assessed, and collected therein, and heretofore authorized or attempted to be authorized by any Act, or Acts of said Districts, or by any Act of the Legislature; making certain exemptions; and declaring an emergency. Acts 1937, 45th Leg., p. 833, ch. 409.

### Art. 2815g—13. Validating elections for establishing, consolidating, abolishing, or changing independent or common districts

Section 1. That all acts of County Boards of School Trustees in any County in this State in ordering an election for the purpose of laying out, establishing, combining, abolishing, or changing any independent or common school districts, are hereby in all things ratified, confirmed, and validated, and that all elections held in any County in this State for the purpose of laying out, establishing, combining, abolishing, or changing any such independent or common school districts, where the majority of the qualified voters, who voted in said elections, voted in favor of laying out, establishing, combining, abolishing, or changing any such independent or common school districts, are also in all things ratified, confirmed, and validated.

Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected, shall be validated by the passage of this Act.

Sec. 2. This law shall not apply to any district or districts the laying out, establishing, combining, abolishing, or changing of which was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which may now be involved in litigation; provided, however, that any contest may be filed within a period of forty-five (45) days after the effective date of this Act, as to the validity of any change attempted to be made by said district or districts, the same as though this Act had not been passed. [Acts 1937, 45th Leg., 1st C.S., p. 1825, ch. 44.]

Effective July 6, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act ratifying, confirming, and validating all acts of County Boards of Trustees in ordering an election for the purpose of laying out, establishing, combining, abolishing, or changing any independent or common school districts, and all elections held in any County in this State for the purpose of laying out, establishing, com-

binning, abolishing, or changing any such independent or common school districts; providing limitations for the ratifying, confirming, or validating of school districts under this Act; providing that this Act shall not affect districts which may be involved in litigation at the effective date of this Act; providing that contests may be filed within forty-five (45) days after the effective date of this Act; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1825, ch. 44.]

**Art. 2815g—14. Validation of school district bonds containing irregularity as to maturity date**

Section 1. That all bonds heretofore voted and issued or heretofore voted and not yet issued, by any common school district, common consolidated school district, rural high school district, or independent school district, regardless of maturity date of the same and regardless of the fact that same do not become due in serial annual installments, are hereby in all things validated.

Sec. 2. It is the intention of the Legislature to only validate those bonds voted by school districts wherein there exists an irregularity with reference to the maturity date. It is not the intention to validate any other irregularity of bonds voted by such school districts.

Sec. 3. This law shall only apply in cases where in all other respects an election was properly held in conformity to the law, and it is expressly provided that all bonds herein validated must mature in not more than forty (40) years.

Sec. 3a. The provisions of this Act shall not apply to such bonds and such districts which are in litigation, at the effective date of this Act. [Acts 1937, 45th Leg., 2nd C.S., p. 1909, ch. 30.]

Effective Nov. 3, 1937.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating, ratifying, and confirming all bond issues heretofore voted and issued, or which have been voted and not yet issued, of all common school districts, common consolidated school districts, rural high school districts, and independent

school districts, regardless of whether said bonds mature in serial annual installments or not; declaring legislative intent with reference to bonds validated; providing bonds validated must mature in not more than forty (40) years; providing the Act shall not apply to bonds in such districts which are in litigation at the effective date of the Act; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1909, ch. 30.]

**Art. 2815g—15. Validation of acts of trustees in creating, etc., school districts in counties not exceeding 11,400 population**

Section 1. That all common school districts, common consolidated school districts, independent school districts, and rural school districts heretofore created, defined, or redefined since June 1, 1936, by the County Board of Trustees of the County wherein such school districts are located including those independent school districts to which territory detached from common school districts has been annexed by the County Board of Trustees of the County in which said school districts are located, are hereby in all things validated, regardless of the fact that they were not properly created, defined, or redefined, or enlarged by such annexation in the first instance, and regardless of the fact that there exists no record of their prior creation, and the acts of such County Boards in creating, defining, redefining, or attaching additional territory to such districts are hereby in all things validated, in counties having a population not exceeding eleven thousand, four hundred (11,400), according to the last preceding United States Census.

Sec. 2. The fact that by inadvertence or oversight there might be some irregularity in the creation or redefining of such district shall in nowise affect its status as a school district. Said school district shall be known and designated by the name given to it by the County Board of Trustees and shall be governed by the law governing the administration of school districts of the same name.

Sec. 2-a. This law shall not apply to any district, the organization or creation of which is now involved in litigation, or concerning which the validity of the organization or creation, or consolidation, or annexation

of territory in or to such district is attacked in any suit or litigation, filed within forty-five (45) days after the effective date of this Act. Provided further, that this Act shall not apply to any district which may have been established, and which has later returned to its original status and has been so recognized by the proper authorities; provided, however, if and when any such litigation shall be finally terminated, in a manner favorable to such district, then this Act shall apply thereto. [Acts 1937, 45th Leg., 2nd C.S., p. 1910, ch. 31.]

Effective Nov. 3, 1937.

**Title of Act:**

An Act validating, ratifying, and confirming the acts of the County Boards of Trustees in creating, defining, redefining, or attaching additional territory to common consolidated school districts, common school districts, independent school dis-

tricts, and rural high school districts, since June 1, 1936, in counties having a population of not more than eleven thousand, four hundred (11,400), according to the last preceding Federal Census; providing exceptions; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1910, ch. 31.]

**Art. 2815g—16. Validation of districts created by joining county line and contiguous districts**

Section 1. All school districts heretofore attempted to be established by the annexation or joining of a part of a county line common school district to a contiguous school district after an election held in said common school district for the purpose of dividing it and/or annexing or joining a part or parts thereof to a contiguous district or districts, whether by order of a county board of school trustees or a County Commissioners Court, are hereby ratified, confirmed, and validated in all respects, provided, however, that said election shall have resulted in favor of division and/or annexation or joining, and provided further that the order of annexation or joining shall be in accordance with the terms of the order calling said election respecting a division and/or annexation or joining; and provided further that such order shall have been made by a county board of school trustees or Commissioners Court of a county containing a part of said county line common school district, and in addition thereto, a part or all of the district to which a part of said county line common school district is annexed or joined. Wherever a part of such county line common school district has been annexed or joined by such an order to a contiguous county line rural high school district, the newly established district shall exist and function under the laws governing county line rural high school districts and shall hereinafter be included within the term county line rural high school district.

Sec. 2. All elections called in the districts validated by Section 1 of this Act to authorize the issuance of bonds for a lawful purpose or to authorize the assumption by the entire district of any indebtedness lawfully chargeable against a part only of such districts, are hereby ratified, confirmed, and validated where a majority of those qualified to vote and voting in such elections voted in favor of the issuance of such bonds, or assuming such indebtedness. All bonds issued pursuant to said elections and now outstanding and all bonds voted at such elections but not yet issued are likewise validated.

Sec. 3. This law shall not apply to any district, the organization or creation of which is now involved in litigation, nor shall it apply to any act of any district mentioned herein, nor to any tax levy, nor any item of indebtedness, either of which is now involved in litigation, nor shall it apply to any district which may have been established and later returned to its original status and which has been so recognized by the proper authorities.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalid as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section, or part of this Act. [Acts 1937, 45th Leg., 2nd C. S., p. 1992, ch. 65.]

Effective Nov. 2, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate school districts attempted to be established by the annexation or joining of a part of a county line common school district to a contiguous school district after an election held in said common school district to divide it and/or annex or join a part or parts thereof to a contiguous district, or districts whether by order of a county board of school trustees or of a County Commissioners Court where said election resulted favorably to division and/or annexation or joining and said order of annexation or joining was in accordance with the terms of the order calling said election pertaining to said division and/or annexation, and where said order was made by county board or Commissioners Court of a county containing a part of said county line common school district, and in addition thereto a part or all of the district

to which a part of said county line common school district was annexed or joined; providing that a district established by annexing or joining a part of said county line common school district to a contiguous county line rural high school district shall exist and function under the laws governing county line rural high school districts; validating elections held in districts validated herein to issue bonds for a lawful purpose or assuming indebtedness lawfully chargeable against a part only of such districts; to validate all bonds issued pursuant to said elections and now outstanding and all bonds voted thereat but not yet issued, exempting from this Act districts, obligations, tax levies, and district acts now involved in litigation, and likewise exempting from the operation of this Act districts returned to their original status, and recognized as such by the proper authorities; providing that the unconstitutionality or other invalidity of any part of this Act shall not affect the remainder thereof; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1992, ch. 65.]

**Art. 2815g—17. Validation of election of trustees in independent districts**

Section 1. Elections heretofore held in independent school districts created by Special Act or Acts of the Legislature of the State of Texas which provided for a Board of five (5) trustees in such district or districts, to elect seven (7) trustees for such districts, are hereby ratified, confirmed, and validated. The Board of Trustees elected at such elections is hereby constituted the Board of Trustees for such district or districts, and such district or districts shall hereafter elect seven (7) trustees instead of five (5), in accordance with the provisions of the General Law governing the election of seven (7) trustees in independent school districts, under which they are now acting.

Sec. 2. All bonds voted by such districts and not yet issued and all bonds issued by such districts and now outstanding are hereby validated. All tax levies made by such Board or Boards of Trustees for and on behalf of such districts and the assessment and collection thereof, are hereby validated.

Sec. 3. All other acts of such Boards of Trustees done under any law authorizing the legally constituted Boards of Trustees of such districts to so act are hereby ratified, confirmed, and validated, it being the intent of this provision to validate only those acts which were legal in all respects, excepting as they might have been made invalid by the fact that such Board consisted of more than five (5) members.

Sec. 4. This Act shall not be construed as obviating any Constitutional requirement of an election, nor shall it be construed as applying to any school district which the Legislature was not constitutionally authorized to create by Special Act, nor shall it apply to any school district mentioned herein which now purports to elect only five (5) trustees.

Sec. 5. This Act shall not apply to any bonds or to any tax levies or any acts of such Board or Boards of Trustees which are now the subject matter of litigation, nor shall it be construed as validating the creation or organization of any district which is now involved in litigation.

Sec. 6. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalidated as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section, or part of this Act. [Acts 1937, 45th Leg., 2nd C.S., p. 2005, ch. 72.]

Effective Oct. 29, 1937.

Section 7 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate elections held to elect seven (7) trustees in independent school districts created by Special Act providing for a Board of five (5) trustees in such districts; providing that the Board of Trustees elected at such elections is hereby constituted the Board of Trustees for such districts; providing that such districts shall hereafter elect seven (7) trustees in accordance with the provisions of the General Law governing the election of seven (7) trustees in independent school districts, under which they are now acting; validating bonds voted by such districts but not yet issued and all bonds issued by such districts and now outstanding; validating all tax levies made by such Board

or Boards of Trustees on behalf of such districts and the assessment and collection thereof; validating all other acts of such Boards of Trustees done under any law authorizing the legally constituted Boards of Trustees of such districts to so act; providing that it shall not be construed as obviating any constitutional requirement of an election nor as validating any district which the Legislature was not authorized to create by Special Act, nor as applying to any district now electing only five (5) trustees; providing that it shall not apply to bonds or tax levies or other acts of such Boards of Trustees now the subject matter of litigation, or to the creation or organization of districts now involved in litigation; providing that the invalidity of any part of this Act shall not affect any other part thereof; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 2005, ch. 72.]

**Art. 2815g—18. Validation of independent district elections assuming indebtedness apportioned against districts**

Section 1. In every instance wherein an election has been held heretofore in any Independent School District upon the question of assumption of indebtedness theretofore apportioned against such district or a part thereof, as a result of its segregation, or the segregation of the part thereof from another Independent School District, such apportionment having been approved by the County Board of Trustees of the County in which said District is located, whether the indebtedness so assumed be the identical proportionate part of the indebtedness owed by the original District as of the time of the segregation or an equal amount of indebtedness incurred by a portion of the original District after such segregation, where a majority of the legally qualified voters voting at such assumption election voted in favor of the assumption of such indebtedness and the governing board of such District has canvassed the returns of such election and declared the results thereof, the act of the governing board calling said election, the act of the voters in voting to assume such indebtedness, and the act of the governing body thereof in canvassing the returns of such election and declaring the results thereof, are each and all hereby expressly validated. The indebtedness thus attempted to be assumed at each such election is hereby declared to be the indebtedness of such District, and the duty is hereby imposed upon the governing body thereof to levy and collect annually against all taxable property therein a tax sufficient to pay interest as it accrues and to pay the principal as it matures.

Sec. 2. All proceedings heretofore had by the governing body of such District for the issuance of bonds to refund indebtedness thus assumed are hereby validated, and such refunding bonds when issued, ap-

proved by the Attorney General of the State of Texas, and registered by the Comptroller of Public Accounts, shall constitute legal and binding obligations of such District.

Sec. 3. Any Independent School District affected by the preceding sections of this Act, and any Independent School District from which all or a part of the territory comprising such Independent School District was detached, may issue interest bearing time warrants for the purpose of paying expenses incident to the refunding of its outstanding bonds, provided that such warrants and the interest thereon shall not exceed the saving in interest effected by the issuance of such refunding bonds.

Sec. 4. Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected shall be validated by the passage of this Act.

Provided further, this law shall not apply to any district, the organization or creation of which, or consolidation or annexation of any territory in or to such district was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which is now involved in litigation, or the validity of the organization or creation of which or annexation or consolidation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further, that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status. [Acts 1937, 45th Leg., 2nd C.S., p. 1871, ch. 7.]

Effective Oct. 26, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating Independent School District elections assuming indebtedness theretofore apportioned against such districts or a part thereof as a result of its segregation from another Independent School District whether the indebtedness so assumed be the identical proportionate part of the indebtedness owed by the original district at the time of its segregation or an equal amount of indebtedness incurred by a portion of the original district after such segregation; declaring the indebtedness thus assumed to be indebtedness of such district; imposing duty upon the governing boards of districts assuming such indebtedness to levy and collect

taxes to pay principal and interest; validating proceedings heretofore had for the issuance of bonds to refund indebtedness so assumed; declaring that such refunding bonds when issued, approved by the Attorney General, and registered by the Comptroller, shall constitute legal and binding obligations of the district; providing no transfer of territory is validated by the Act unless authorized by an affirmative vote of voters in such district, and providing this Act shall not validate the organization or creation of any district, or consolidation or annexation of any district in or to such district where the same is now involved in litigation or where suit or litigation is filed with reference thereto within forty-five days after the effective date of this Act; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1871, ch. 7.]

**Art. 2815g—19. Validation of consolidated independent districts of 13,500 to 15,500 population**

Section 1. Any Consolidated Independent School District heretofore established by the County Board of School Trustees of counties having not less than thirteen thousand, five hundred (13,500) nor more than fifteen thousand, five hundred (15,500) population according to the last preceding Federal Census, are hereby validated in all respects, and the acts of said County Boards of School Trustees as recorded in the minutes of said Boards are hereby ratified and confirmed.

Sec. 2. Provided further, this law shall not apply to any district, the organization or creation of which, or consolidation or annexation of any territory in or to such district was not submitted to a vote of the

people, or petitioned by a majority of the qualified voters of such district or districts or territories affected thereby, or which is now involved in litigation, or the validity of the organization or creation of which or annexation or consolidation of territory in or to such district is attacked in any suit of litigation filed within forty-five (45) days after the effective date of this Act. Acts 1939, 46th Leg., Spec.L., p. 1021.

Effective Feb. 6, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate the establishment of Consolidated Independent School Districts in counties having not less than thirteen thousand, five hundred (13,500) nor more

than fifteen thousand, five hundred (15,500) population according to the last preceding Federal Census, as established by the acts of the County Boards of School Trustees of such counties, and ratifying and confirming said acts of such Boards; making certain exceptions; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 1021.

**Art. 2815g—20. Validation of certain county line independent rural high school districts and acts of trustees**

Section 1. That all attempts to consolidate or annex school districts situated in three (3) counties or either of which lies in three (3) counties, the supervision of said schools being located in counties having a population of not less than eleven thousand, four hundred and twelve (11,412) and not more than eleven thousand, nine hundred (11,900), as shown by the last preceding Federal Census, be and the same are hereby validated in all respects, as though their consolidation or annexation had been duly and legally provided for and established in the first instance.

Sec. 2. All acts of the County School Boards of Trustees of such counties, or persons acting under their directions, in creating county line independent rural high school districts are hereby in all things validated. The fact that by an inadvertence or oversight any act of the officers of said counties in the creation of any such district was omitted shall in nowise invalidate such district.

Sec. 3. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalid, or unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section, or part of this Act. Acts 1939, 46th Leg., Spec.L., p. 1022.

Effective Feb. 10, 1939.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating all county line independent rural high school districts partly situated in three (3) counties, the supervision of said schools being located in counties having a population of not less

than eleven thousand, four hundred and twelve (11,412) nor more than eleven thousand, nine hundred (11,900), as shown by the last preceding Federal Census; validating the actions of the County School Boards of Trustees of such counties; validating all proceedings and actions of said Boards of Trustees; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1022.

**Art. 2815g—21. Validating acts of trustees in ordering elections for establishing, combining, abolishing, or changing independent or common districts in counties of 22,570 to 22,600; bond elections validated**

Section 1. That all acts of County Boards of School Trustees in any county of this State having a population of not less than twenty-two thousand, five hundred and seventy (22,570) nor more than twenty-two thousand, six hundred (22,600), according to the last preceding or any subsequent Federal Census, in ordering an election for the purpose of

laying out, establishing, combining, abolishing, or changing any Independent or Common School Districts, are hereby in all things ratified, confirmed, and validated, and that all elections held in any county in this State for the purpose of laying out, establishing, combining, abolishing, or changing any such Independent or Common School Districts, where the majority of the qualified voters, who voted in said elections, voted in favor of laying out, establishing, combining, abolishing, or changing any such Independent or Common School Districts, are also in all things ratified, confirmed, and validated.

Sec. 2. This Act shall not apply to any district or districts the laying out, establishing, combining, abolishing, or changing of which was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which may now be involved in litigation.

Sec. 3. Where an election has heretofore been ordered held and carried in any Independent School District in any county having a population of not less than twenty-two thousand, five hundred and seventy (22,570) nor more than twenty-two thousand, six hundred (22,600), according to the last preceding or any subsequent Federal Census, for the purpose of authorizing the issuance of bonds of such School District and the levying of a tax for the payment of said bonds, and there has been in the proceedings of such election, in the petition for election, order of the School Board for such election, notice of election and order declaring the results of such election, either of the following errors or irregularities, to wit: (1) no definite maturity dates of bonds specified, (2) illegal tax rate set, (3) the phrase "resident taxpayer who has duly rendered his property for taxation" omitted, (4) a lower property valuation recommended, (5) a failure to have the proper certificate of the election judge of said election, (6) a conflict in the order of election and the petition for election, order of the School Board calling the election, notice of election, and the order of the School Board declaring the result thereof—are hereby ratified, confirmed, and validated; provided, however, that nothing contained in this Act shall be held to waive and destroy any defense against the validity of any bonds other than those based on such errors and irregularities hereinabove specified; providing further, that the provisions of this Act shall not apply to or in anywise affect any bonds of any School District which bonds are now in litigation in any Courts of this State. Acts 1939, 46th Leg., Spec.L., p. 1029.

Effective April 18, 1939.

Section 4 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act ratifying, confirming, and validating all acts of County Boards of Trustees in any county of this State having a population of not less than twenty-two thousand, five hundred and seventy (22,570) nor more than twenty-two thousand, six hundred (22,600) according to the last preceding or any subsequent Federal Census, ordering an election for the purpose of laying out, establishing, combining, abolishing, or changing any Independent or Common School Districts, and all elections held in any county in this State for the purpose of laying out,

establishing, combining, abolishing, or changing any such Independent or Common School Districts; and ratifying, confirming, and validating an election of any Independent School District held for the purpose of authorizing the issuance of bonds and levying a tax for the payment of said bonds where there has been in the election proceedings of such election, in the petition for election, order of the School Board for such election, notice of election and order declaring the results thereof, certain errors and irregularities in certain counties; providing that this Act shall not affect districts which may be involved in litigation at the effective date of this Act; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 1029.

**Art. 2815g—22. Validating creation of certain county line districts**

Section 1. That from and after the effective date of this Act all County Line Common School Districts and all County Line Consolidated



Common School Districts created by General or Special Law in this State, and heretofore laid out and established, or attempted to be established, by the proper officials of any county or counties in this State having a population of not less than twenty-two thousand, one hundred (22,100) and not more than twenty-two thousand, five hundred (22,500), according to the last preceding Federal Census, and in all counties having a population of not less than twenty-four thousand, one hundred and eighty (24,180) and not more than twenty-four thousand, two hundred (24,200), according to the last preceding Federal Census, or by the Legislature of the State of Texas in such counties, and heretofore recognized by either State or county authorities and School Districts of such counties, and where, for such consolidation of County Line Consolidated Common School Districts and/or County Line Common School Districts, the election or elections were ordered by the County Judges of the counties in which such County Line Common School Districts and/or County Line Consolidated Common School Districts lie or are situated, and where such election was approved by the County Commissioners Courts of such counties are hereby validated in all respects as though they had been duly and legally established in the first instance. The fact that by inadvertence or oversight, any act of the officials of any such county or counties in the creation of any such districts, as hereinabove set out, was omitted shall in nowise invalidate such district; and the fact that by inadvertence or oversight, any act was omitted by any Board of Trustees of any of the School Districts embraced within this Act, in ordering an election or elections, or in declaring the result thereof, or in levying the taxes therefor; and the act of any official or person assuming to act as such official shall in nowise invalidate any of such proceedings by such districts.

All acts of the County Boards of School Trustees of any and all counties above set out in the creation of any County Line Common School District or any County Line Consolidated Common School District in rearranging, changing, consolidating, or subdividing such County Line Common School Districts and/or County Line Consolidated Common School Districts, or in increasing or decreasing the area of such school districts, or in creating new districts, and consolidating County Line Common School Districts or County Line Consolidated Common School Districts out of parts of existing districts or otherwise, are hereby in all things validated.

Sec. 2. All acts of the Board or Boards of Trustees in such districts, or the County Judges, or the County Commissioners Courts in such districts, in ordering an election or elections, declaring the result of such elections, and all bonds issued, if any, and now outstanding, and all tax levies made therefor, and all bonds heretofore authorized, if any, or heretofore voted, if any, for the purpose of financing and aiding in the financing of any work, undertaking or project by any school district as hereinabove defined in this State, are hereby validated, ratified, approved, and confirmed, notwithstanding any difficulties or irregularities (other than Constitutional) in such procedures for consolidation, creation, and establishment of such districts, shall hereafter be held to be binding, legal and in all things regular.

It being the purpose of this Act to validate all acts of officials in the creation, establishment, and consolidation of County Line Common School Districts and County Line Consolidated Common School Districts in the counties above set out in this State where irregularities in procedural matters might have inadvertently failed of performance by the proper official, and at the proper time.

Sec. 3. Nothing in this Act shall be construed to affect the Gladewater County Line Independent School District. Acts 1939, 46th Leg., Spec.L., p. 1027.

Effective May 16, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act validating County Line Common School Districts and County Line Consolidated Common School Districts in certain counties in this State; validating all acts of the Board or Boards of Trustees in such districts; validating acts of County Commissioners Courts in ordering an election; validating all acts of County Judges in ordering elections; validating all acts of officials declaring the results of such elec-

tions; validating all bonds issued now outstanding; validating all tax levies heretofore made, and all bonds heretofore authorized or heretofore voted but not yet issued; validating all orders, notices, and things requested in the authorization and issuance of bonds; validating the sale, execution, and delivery thereof; validating each and every procedural act heretofore done or performed in the organization, management, control, and operation of such school districts; providing nothing in the Act shall affect the Gladewater County Line Independent School District; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1027.

#### Art. 2815g—23. Continuing certain districts

In all counties having a population of not more than twenty-three thousand, nine hundred (23,900) and not less than twenty-three thousand, eight hundred and eighty (23,880) according to the Federal Census of 1930 and which have at the same time an independent school district of not more than one hundred and sixty (160) and not less than one hundred and fifty (150) scholastics according to the Public School Directory of the State Department of Education for 1938-1939 that where the independent district has been operating as an independent school district and because of falling below one hundred and fifty (150) scholastics would otherwise have to revert to a common school district, it is provided that said district shall remain for all purposes an independent school district regardless of said decrease in scholastic population. Acts 1939, 46th Leg., Spec.L., p. 722, § 1.

Effective May 15, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing that certain independent

school districts in certain counties shall remain independent school districts for all purposes regardless of decrease in scholastic population; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 722.

#### Art. 2815g—24. Consolidating common school district to independent school district having scholastic population of 250-400 validated

All acts and proceedings of the county school board of trustees in any county in this State in consolidating a common school district to any independent school district having a scholastic population of not less than two hundred and fifty (250) nor more than four hundred (400), according to the scholastic census of the said independent school district at the time of the consolidation, and all acts and proceedings of the county board of school trustees in any way relating to such consolidation are hereby ratified, validated, and approved. Acts 1939, 46th Leg., Spec.L., p. 1017, § 1.

Filed without the Governor's signature May 19, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to ratify all acts and proceedings

of the county board of school trustees in any county in the State in consolidating common school districts to independent school districts having a scholastic population of not less than two hundred and fifty (250) nor more than four hundred (400) according to the scholastic census at the time of the consolidation, and rat-

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ifying and confirming all acts and proceedings of the board in any way relating to such consolidation; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1017.

## 7. JUNIOR COLLEGES

[Art. 2815h. Junior college districts]

### Control of college established

Sec. 4. A Junior College established and maintained by an Independent School District or city that has assumed control of its schools, or where the same has been organized as a Junior College District under the provisions of this Act prior to October 15, 1935, as an independent entity, or may hereafter be so created, and/or wherein the boundaries of the Junior College District are the same, or substantially the same, as the Independent School District, shall be governed, administered, and controlled by and under the direction of the Board of Education of such District or city.

The said Board of Education of such Junior College District, under the provisions of this Act, shall in addition to all of the powers and duties vested in them by the terms of this Act, be furthermore vested with all the rights, powers, privileges, and duties conferred and imposed upon Trustees of Independent School Districts by the General Laws of this State, so far as the same may be applicable thereto and not inconsistent with this Act. As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 1.

Amendment of 1937, effective April 9, 1937, laws and section 10 declares an emergency making the act effective on and after its passage.

Section 9 of the amendatory act of 1937 repeals all conflicting laws and parts of

### District bond issues and taxes

Sec. 7. The Junior College District created under this Act shall have the power to issue bonds for the construction and equipment of school buildings and the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection. The Junior College District shall also levy and collect taxes for the support and maintenance of the Junior College, provided that no bonds shall be issued and no taxes shall be collected until by vote of the majority of the qualified voters of the Junior College District, at an election called for that purpose in accordance with the provisions of the General Law providing for similar elections in Independent School Districts, such bonds and taxes are authorized. The election for the issuance of such bonds for the levying of such tax or taxes, shall be ordered by the Board of Education of the Junior College upon petition signed by ten (10) per cent of the qualified property-taxpaying voters residing in such District, praying for the issuance of such bonds and the levying of tax or taxes. It shall be the duty of the Board to order such elections, and the same shall be conducted and the returns made to the Board of Education for the Junior College District. The issuance of the bonds for Junior College purposes, and the provision of the sinking fund for the retirement thereof, and the payment of interest and the levying of taxes for the support and maintenance of the Junior College, shall in so far as same is applicable, be in accordance with the general election laws and the laws governing the issuance of bonds and the levying of taxes in the Independent School District, provided the total amount of tax levied for Junior College purposes shall never exceed twenty (20) cents on the One Hundred Dollars of property valuation within said District, based on the valuation fixed by

the Board of Equalization of the Junior College District; provided further that if no taxes have been assessed and equalized in said Junior College District at the time of the issuance of such bonds, then the basis shall be the valuation in the Independent School District. If its boundaries are not the same, then such valuation shall be based on the valuation fixed by the Commissioners Court for State and County taxes in such County within the limits of the Junior College District. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 1; Acts 1937, 45th Leg., p. 248, ch. 130, § 2.]

Amendment of 1937, effective April 9, 1937.

#### Maintenance of existing college

Sec. 7a. The Board of Trustees of any single Independent District in which a Junior College shall have already been created and which, under the provision of this Act, shall be under the control of such Board of Trustees may set aside for the maintenance of said college, not to exceed twenty per cent (20%) of the taxes collected in said district as theretofore authorized by a vote of the people residing in said district, in the manner provided by law, without the requirement of an election to be held in said district for the purpose of voting taxes for the maintenance of said college, provided, however, that the total amount of taxes levied in said district for the maintenance of the public schools therein situated, including said Junior College, shall not exceed the highest amount now allowed, or which may hereafter be allowed by law for the maintenance of schools in an Independent School District of this State; and, provided further, that this section shall apply only to those districts which had been using such funds for Junior College purposes prior to October 1, 1936. [Acts 1929, 41st Leg., p. 648, ch. 290, § 7a, as added Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 2.]

Effective Oct. 22, 1936.

Section 3 of the Amendatory Act of 1936 declared an emergency and provided that the Act should take effect from and after its passage.

Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 2, purported to add a new section 7a to Acts 1929, 41st Leg., p. 648, ch. 290, but contained provisions identical with

section 8 of the same Act except the proviso "that this section shall apply only to those districts which had been using such funds for Junior College purposes prior to October 1, 1936" which was added by the Act of 1936.

Another section 7a was added to this article by Acts 1937, 45th Leg., p. 248, ch. 130, § 3. See section 7a, post, under this article.

Sec. 7a. The Assessor and Collector of such Junior College District shall assess the taxes and collect the same in the manner now provided by law for the collection of ad valorem taxes by County Assessors and Collectors and where there is not herein contained any specific provision or direction as to how anything connected with the assessment and collection of taxes shall be done, then the provisions of the General Law shall prevail. The Board of Education of said District shall have the power, and is hereby authorized to appoint three resident citizens of the said District to act as a Board of Equalization to equalize the values of all property subject to taxation in said District and said Board shall qualify in the same manner and shall perform the same duties as is authorized to be performed by the Board of Equalization appointed by the City Council of Cities and towns incorporated under the General Laws of this State.

All taxes provided for by this Act shall become due and payable on the same date as the taxes in the Independent School District provided the boundaries of the Junior College District are coterminus with the Independent School District. If the boundaries of the Junior College District

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are not coterminous with the Independent School District, then the taxes of said District shall become due and payable on the same date as is provided for taxes due to State and County. Said taxes shall be and remain a first and prior lien upon all the land and other property against which the same were assessed. In case such tax shall become delinquent there shall be added the same penalty and the same shall draw interest at the same rate and from the same date as is provided in case of taxes becoming delinquent to Independent School Districts under the General Laws. [Acts 1929, 41st Leg., p. 648, ch. 290, § 7a as added Acts 1937, 45th Leg., p. 248, ch. 130, § 3.]

Amendment of 1937, effective April 9, 1937.

Another section 7a was added to this article by Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 2. See section 7a, ante, under this article.

#### Assessment, equalization and collection of taxes

Sec. 7b. In lieu of the manner of assessment and collection of taxes, as provided in Section 7a, the Board of Education of such Junior College District may provide for the assessment, equalization, and collection of taxes in the manner following, to wit:

(a) If the boundaries of said Junior College District shall be the same or substantially the same, as that of an Independent School District, having an Assessor and Collector of Taxes then such District may have the taxes of their District assessed and collected by the Assessor and Collector of Taxes of such Independent School District and have such taxes equalized by the Board of Equalization of such Independent School District.

(b) Where a city has assumed control of its schools and uses the Assessor and Collector of Taxes appointed and paid by the city is hereby authorized to have their taxes assessed, equalized, and collected by the same Board that assesses, equalizes, and collects city taxes.

(c) The Board of Education of such Junior College District, if they prefer to do so, may have the taxes of their District assessed and collected by the Assessor and Collector of County Taxes in the County in which said District shall be situated, or collected only by the Assessor and Collector of County Taxes, and in such event, such taxes shall be assessed and collected by said County officers, as the case may be, and turned over to the Treasurer of the Junior College District for which such taxes have been collected. The property of such Districts having their taxes assessed and collected by the Assessor and Collector of County Taxes shall not be assessed at a greater value than that assessed for County and State purposes. If said taxes are assessed by a Special Assessor of the Junior College District, or shall be assessed by the Special Assessor of the Independent School District in the manner above set out and are collected only by the County Tax Collector, the property of said District may be assessed at a greater or less value than that assessed for State and County purposes and the Assessor and Collector of County Taxes in such cases shall accept the rolls prepared by the Special Assessor or by the Assessor of the Independent School District, as the case may be, and approved by the Board of Education, as provided in this Section. When the Assessor and Collector of County Taxes is required to assess and collect the taxes of a Junior College District, he shall receive the same percentage as for State and County Taxes. [Acts 1929, 41st Leg., p. 648, ch. 290, § 7b, as added Acts 1937, 45th Leg., p. 248, ch. 130, § 3.]

Amendment of 1937, effective April 9, 1937.

**Amount of tax levy**

Sec. 9. The Board of Education of the Junior College District shall levy taxes for such District and in levying such taxes shall base the amount levied on the amount of money needed, with a reasonable margin for loss and expenses in collecting same, and shall furnish a copy of the order making such levy to the Assessor and Collector of Taxes for the Junior College District, or to such other agency to whom the assessment of such taxes shall be entrusted as above provided. [As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 4.]

Amendment of 1937, effective April 9, 1937.

**Collection of taxes and report**

Sec. 10. In case the tax levy necessary to meet the needs of the Junior College District is within the limit of twenty (20) cents prescribed by this Act and voted by the Junior College District, it shall be the duty of the assessing authority, as above indicated, to assess taxes for Junior College purposes, and it shall be the duty of the Collector of Taxes to collect the same. The Tax Assessor and Collector of the Junior College District, or other agency entrusted with the collection of such taxes, as hereinabove provided, shall, on or about the tenth of each month or at such other times as may be prescribed by the Board of Education of said District, make a report to the Junior College Board of Education showing all moneys collected by him during the past month for Junior College purposes and shall each month place such funds with the Treasurer of the Junior College District where such Junior College District is a separate and distinct entity, or to the Independent School District or city, where such Junior College District is operated by the Independent School District, or the city, as the case may be, to the credit of the Junior College fund, such funds to be drawn upon by action of the Junior College Board of Education, or other governing body, as the case may be. As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 5.

Amendment of 1937, effective April 9, 1937.

**Bond of tax collector**

Sec. 11. The Assessor and Collector of Taxes for the Junior College District shall enter into a bond with two or more good and sufficient sureties or surety bond for the protection of the Junior College fund, said bond to be made payable to the Board of Education of the Junior College District and to be made in a sum not less than double the amount of money which may be in his hands at any time while in office. The amount of said bond will be fixed by the Board of Education of the Junior College District and a copy filed with the State Board of Education. The Junior College Board shall require a similar bond of any and all other persons or corporations in whose possession such funds may be kept.

The Board of Education of the Junior College District shall have the right to select and designate a depository for such District and the General Laws pertaining to County depositories, so far as applicable, shall govern in the selection of the District depository, and with respect to the depository bond, and the like. As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 6.

Amendment of 1937, effective April 9, 1937.

**School funds not available for maintenance; penalty for use**

Sec. 14. No funds received for school purposes from the State Available School Fund or raised by local taxation for school purposes

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under the General or Special Laws, except as in this Act specifically provided, or except as may be hereafter provided by the Legislature of the State of Texas, shall be used for the establishment, support, and maintenance of the Junior College. As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 7.

Amendment of 1937, effective April 9, 1937.

**Maintenance of Union Junior College by contiguous districts**

Sec. 17. Two or more contiguous independent school districts or two or more contiguous common school districts, or a combination composed of one or more independent school districts, with one or more common school districts of contiguous territory within the same county, having a combined taxable wealth of not less than Nine Million Five Hundred Thousand (\$9,500,000.00) Dollars, and having a scholastic population of not less than seven thousand (7,000) the next preceding school year, and not less than four hundred (400) students in the last four years in the classified high school or high schools of said districts may, by vote of the qualified voters of the said territory, establish and maintain a Union Junior College. Any county or combination of contiguous counties in the State, having a taxable property valuation of not less than Nine Million Five Hundred Thousand (\$9,500,000.00) Dollars, and having a scholastic population of not less than seven thousand (7,000) the next preceding school year, and not fewer than four hundred (400) students in the last four years of the classified high school or high schools within the proposed territory during the next preceding school year, may, by vote of the qualified voters of the proposed territory, establish and maintain a county or joint county Junior College. [As amended Acts 1935, 44th Leg., p. 140, ch. 57, § 1; Acts 1937, 45th Leg., p. 134, ch. 69, § 1.]

Effective March 25, 1937.

the act should take effect from and after its passage.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

**Scholastic enrollment of proposed district**

Sec. 17(a). Provided the proposed District may have less than seven thousand (7,000) scholastic enrollment, but not less than five thousand (5,000) in the next preceding school year, and where the State Board of Education finds that the proposed District is in a growing section, and that there is a public convenience and necessity for such Junior College. [Acts 1929, 41st Leg., p. 648, ch. 290, § 17(a), as added Acts 1937, 45th Leg., p. 134, ch. 69, § 1.]

Effective March 25, 1937.

**County tax collector to collect tax**

Sec. 22. All taxes levied for a County or joint County Junior College District shall be assessed and collected in the manner provided in Sections 7b and 7c and such Collector each month shall place such funds with the Treasurer of such County or joint County College District. [As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 14.]

Amendment of 1937, effective April 9, 1937.

**Art. 2815h—1. Validation of Junior College Districts**

All Junior College Districts heretofore organized and created in any manner under the provisions of the Acts of the Forty-first Legislature, 1929, Page 648, Chapter 290,<sup>1</sup> and/or under any amendment thereof, are hereby validated in all respects as though they had been duly and legally established in the first instance. All proceedings and acts of the board of trustees of all independent school districts heretofore taken by such

boards of trustees in creating or undertaking to create Junior College Districts are likewise hereby validated in all respects as though they had been duly and legally established in the first instance. All proceedings and acts of boards of trustees, boards of education, or other governing bodies of Junior College Districts heretofore taken are here now validated. All bonds heretofore voted, authorized, and/or sold and/or now outstanding of said Districts and all bonds heretofore voted but not yet issued are hereby in all things validated.

The fact that by inadvertence or oversight any act of the officers of any District was omitted shall in no wise invalidate such District and the fact that by inadvertency or oversight any act was omitted by any board of trustees, board of education, or other governing body of any such District in ordering an election, or elections, or in declaring the result thereof or in levying the taxes for such District, or in the issuance of the bonds of any such District shall in no wise invalidate any of such proceedings, or any bonds so issued by such District.

This Act shall not apply to any District, the organization or creation of which is now involved in litigation, nor shall this Act apply to or affect any litigation now pending which involves the validity of such District, or the validity of any bonds issued or undertaken to be issued by it. Acts 1937, 45th Leg., p. 143, ch. 76, § 1.

1 Article 2815h.

Effective March 25, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to validate the organization and creation of all Junior College Districts created in any manner under the provisions of the Acts of the Forty-first Legislature, 1929, Page 648, Chapter 290, and/or under any amendment thereof; validating all proceedings and acts of the board of trustees of all independent school districts hereto-

fore taken by such boards of trustees in creating or undertaking to create Junior College Districts; validating all proceedings and acts of boards of trustees, boards of education, or other governing bodies of Junior College Districts heretofore taken; validating all bonds voted, authorized and/or sold and/or now outstanding of said Districts; validating all tax levies made in behalf of said College Districts; making certain exceptions, and validating certain Independent and Junior College School Districts and tax assessments and tax levies in such districts; and declaring an emergency. Acts 1937, 45th Leg., p. 143, ch. 76.

**Art. 2815h—2. Validation of independent school districts constituting Junior College Districts**

The creation and existence of all Independent School Districts which also constitute a Junior College District, and which have been enlarged since the creation of such Junior College District, hereby are in all things validated as enlarged and as now existing and operating; and the creation and existence of such Junior College Districts as enlarged and as now existing and operating, hereby are in all things validated; and all tax assessments and tax levies by such Independent School Districts or Junior College Districts, hereby are in all things validated. [Acts 1937, 45th Leg., p. 143, ch. 76, § 1-a.]

Effective March 25, 1937.

Emergency section. See note under article 2815h-1, ante.

**Art. 2815h—3. Independent districts in counties of 34,150 to 34,200 and 6,040 to 6,070 population authorized to establish junior colleges**

Section 1. From and after the effective date of this Act, the boards of school trustees of all independent school districts in this State now established, or hereafter to be established, which are located in counties of this State having a population of not less than thirty-four thousand, one hundred and fifty (34,150) and not more than thirty-four thousand,



two hundred (34,200) according to the last Federal Census or any subsequent Federal Census, and where the school buildings and grounds of such independent school districts are located in whole or in part in a town or a city having a population of not less than six thousand and forty (6,040) and not more than six thousand and seventy (6,070) according to the last Federal Census or any subsequent Federal Census, are hereby authorized and empowered to create and establish by and through the boards of trustees of such independent school districts as hereinabove defined, a junior college.

#### Management and control

Sec. 2. Said junior college or colleges, as the case may be, shall be run in conjunction with and as an adjunct to the independent school districts now created and established in such districts, or that may hereafter be created in such districts. Said junior college or colleges shall continue to exist and be run in connection with such independent school districts, and the boards of trustees of such independent school districts shall continue to be the boards of trustees of both the independent school districts and the junior college or colleges herein created.

#### Financed without taxation or state appropriations

Sec. 3. The junior colleges herein created shall be operated exclusively by tuition, grants, gifts, or donations, and in no event shall such colleges ever be supported by appropriations from the State of Texas, or by taxes imposed by such districts.

It being the sole and only purpose of this Act to authorize the creation and operation of such junior colleges in conjunction with the independent school districts coming under the provisions of this Act.

#### Departments; degrees; minimum number of students

Sec. 4. The junior colleges herein created and authorized must provide for at least five (5) departments, and the heads of such departments shall be teachers holding M. A. Degrees, or their equivalent; however, the teachers in such departments who are not the heads of such departments shall be required to hold B. A. Degrees from some reputable, recognized college or university to be eligible to teach in such junior colleges; and provided further that the colleges authorized hereunder shall have a minimum of sixty (60) students, who may be divided as follows: forty (40) freshmen and twenty (20) sophomores.

#### Taxable value of property in district

Sec. 5. Such school districts, before being authorized to create a junior college in connection with the independent school districts as hereinabove provided for, shall have a taxable value of all property taxable in such districts of not less than Four Million, Five Hundred Thousand Dollars (\$4,500,000), and unless such values, according to the tax rolls of such districts, exist, no such college shall be created. As amended Acts 1939, 46th Leg., Spec.L., p. 687, § 1.

#### Enlargement of districts

Sec. 6. The independent school districts and the junior colleges provided for herein, shall continue to operate as independent school districts, and may be enlarged by consolidation or otherwise without affecting the rights of such districts to maintain such junior colleges as an added feature thereto.

**Approval of State Board of Education**

Sec. 7. It shall be the duty of the boards of trustees for the independent school districts coming within the provisions of this Act, before operating and conducting any junior college in connection therewith, to place said proposition before the State Board of Education, and receive the approval of such Board and the approval of the State Superintendent of Public Instruction, and no such junior college shall be established hereunder unless and until such approval is secured.

**Determination of application by Board**

Sec. 8. In considering such application, it shall be the duty of the State Board of Education to advise with the State Superintendent of Public Instruction as to the feasibility and desirability of establishing such junior colleges in such districts. In passing upon this question, it shall be the duty of the State Board of Education to consider the needs of the State, the welfare of the State as a whole, as well as the welfare of the community or communities involved.

The action of the State Board of Education shall be communicated through the State Superintendent of Public Instruction to the boards of trustees of the independent school districts authorized to create junior colleges in connection therewith, stating either the approval of the said Board of Education or the disapproval of said plan, and in case of disapproval of said plan no such junior college shall be created or authorized under this Act. However, if the State Board of Education approves the establishment of the junior colleges as authorized herein, it shall then be the duty of the boards of trustees for such districts to enter an order authorizing the boards of trustees of the independent school districts to make and provide for the junior colleges authorized hereunder; provided, however, that in the creation of such junior colleges, the boards of trustees of such independent school districts, having supervision and control of such colleges, shall never be authorized to issue any bonds or levy any tax for the support and maintenance of such junior college departments of such independent school districts.

**Taxation**

Sec. 9. All Taxes Inuring: The independent school districts authorized herein to create junior colleges in connection with such independent school districts shall function in the collection of taxes and in the management of such schools in the same mode and manner as now provided by law for the management, control, and supervision of independent school districts just as though no added authority had been given.

**Self liquidating**

Sec. 10. The junior college departments of the independent school districts coming under the provisions of this Act are declared to be self-liquidating, and for such purpose the Board of Education or boards of trustees of any such districts are hereby authorized to charge such fees and tuition for the attendance, as may be necessary to make the project self-liquidating; and may accept grants, gifts, donations, and endowments from any private source, provided such grants, donations, endowments, and gifts are voluntarily made.

It being reiterated and redeclared herein that such junior colleges, as by this Act authorized, shall never be authorized to issue any bonds or levy any tax, or in any manner create any compulsory charge for the support of such junior colleges.

**Act cumulative**

Sec. 11. This Act shall be considered cumulative of all laws and parts of laws now in force with reference to the creation of junior colleges in this State, and shall not be deemed to repeal any such laws. Acts 1939, 46th Leg., Spec.L., p. 684.

Effective May 8 and 23, 1939.

Section 12 of the act of 1939 and section 2 of the amendatory act declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act establishing, authorizing, and providing for junior colleges in connection with the independent school districts now established, or hereafter to be established, and located in all counties in this State having a population of not less than thirty-four thousand, one hundred and fifty (34,150) and not more than thirty-four thousand, two hundred (34,200) according to the last Federal Census or any subsequent Federal Census, and where the school buildings and grounds of such independent school districts are located, in whole or in part, in a town or city having a population of not less than six thousand and forty (6,040) and not more than six thousand and seventy (6,070) according to the last Federal Census or any subsequent Federal Census; authorizing the creation and establishment by the boards of trustees of such independent school dis-

tricts, as hereinabove defined, of a junior college; providing the boards of trustees of the independent school districts embraced within this Act shall comprise a board of trustees for the junior colleges; providing the junior colleges authorized herein shall be operated exclusively by tuition, grants, gifts, or donations and shall never become a charge against the State, or require appropriations therefrom, providing number of departments for such junior colleges; providing qualifications of teachers in such junior colleges; providing minimum number of students in such colleges; providing minimum taxable values for such districts; providing for enlargement of such districts; providing for approval by the State Board of Education with the advice of the State Superintendents; providing for mode and manner of collecting taxes for such districts; making said law cumulative of all laws and parts of laws now in force in this State with reference to the creation of junior colleges; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 684.

## CHAPTER FIFTEEN—SCHOOL FUNDS

**Art. 2835a.** State Board may exact certain duties of districts, cities, and towns which have assumed control of schools, and whose bonds are owned by Permanent School Fund

Section 1. The State Board of Education may require any school district, or any city or town which has assumed the control of public schools located therein, school bonds of which are owned by the State Permanent School Fund, and which may be entitled to receive moneys from the Available State School Fund, or for Rural Aid, and which is in default for a period of two (2) years as to the payment of principal or of interest or both, of any outstanding school bond issue of such district, city or town, to levy a tax sufficient to pay the principal and interest of its bonds as such principal matures and as such interest accrues; provided, if any such district, city or town shall furnish to the State Board of Education satisfactory proof that its taxing ability is insufficient to provide money enough to pay principal and interest of its bonds according to their tenor and effect, then in the alternative, the Board may require such district, city or town to exhaust its legal remedies in the matter of collecting its taxes then delinquent, and to levy a tax at the maximum rate for bond purposes permitted under the law applicable to it, based on the assessed valuation of taxable property therein, duly and fairly ascertained in the manner required by law; that when such taxes shall have been so levied and collected, each holder of its bonds including the State of Texas, shall be entitled to receive a proportionate part of the money thus collected based on the requirements for principal and interest of the bonds owned by each holder calculated on the basis of original bonds before refunding operations, if any, occa-

sioned because of the embarrassed financial condition of such district, city or town; that the proportionate part to be available to each holder shall not be reduced by reason of acceptance by said holders of refunding bonds.

**Default in payments of principal or interest of bonds**

Sec. 2. If any such district, city or town defaults in the payment of principal or interest on its bonds for a period of two years held by the State Permanent School Fund, the Comptroller of Public Accounts shall not issue any warrants to or for the benefit of such district, city or town for the payment of the Available School Fund or for Rural Aid; provided that at such time as the Comptroller shall have received a certificate executed by the President and Secretary of the State Board of Education to the effect that such district, city or town has complied with the requirements of the State Board of Education as to the levying and collecting and distributing of taxes as more fully described in Section 1 of this Act, then in that event the Comptroller of Public Accounts shall resume making such payments to or for the benefit of such district, including the making of pretermitted payments.

**Authority of State Board during period of delinquency**

Sec. 3. So long as any such district, city or town is delinquent in its payments of principal or interest or both, the State Board of Education shall have authority to specify the method of crediting payments to the State made by such District, city or town as to principal or interest.

**Duties and rights cumulative**

Sec. 4. The duties imposed and the rights conferred by this Act shall be cumulative of all other duties heretofore imposed and rights heretofore conferred and shall not be considered to be in substitution thereof.

**Partial invalidity**

Sec. 5. In event any provisions of this Act shall be in conflict with the provisions of any other Act, the provisions contained in this Act shall prevail. In event any sentence, clause or provision contained in this Act shall be invalid, such partial invalidity shall not affect the other provisions of this Act. As amended Acts 1937, 45th Leg., p. 619, ch. 309, § 1.

Amendment of 1937, effective May 13, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

## CHAPTER SIXTEEN—FREE TEXTBOOKS

### 1. TEXTBOOK COMMISSION

Art.  
2843a. Text books on reading of music  
[New].

### 1. TEXTBOOK COMMISSION

Art. 2843a. Text books on reading of music

Resolved by the Senate of the State of Texas, the House of Representatives concurring, that it was and is now the intention of the Legislature to include among the text books authorized to be selected and adopted by the State Board of Education, text books on the reading of music

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

and that the reading of music is included in the subjects authorized to be taught in the public free schools of Texas; and, be it further

Resolved that such is the legislative construction to be placed on the statutes governing the selection of text books in the public free schools of Texas. [Acts 1936, 44th Leg., 3rd C.S., p. 2114, S.C.R. # 2.]

The resolution cited to the text filed in the Department of State, Oct. 22, 1936, without the Governor's signature contained the following preamble:

"WHEREAS Under the statutes relating to free text books, the State Board of Education is authorized to select and adopt a uniform system of text books to be used in the public free schools of Texas, and

"WHEREAS There is some uncertainty as to whether or not the State Board of Education has authority to select and adopt text books on the reading of music, and

"WHEREAS In the public free schools where music is being taught, especially in the bands of many of the public free schools, the pupils interested in such subject are put to quite an expense in purchasing text books on the reading of music, and

"WHEREAS It is deemed advisable to clarify and make certain that text books on the reading of music are included among the subjects for which text books are permitted to be selected and adopted by the State Board of Education; now, therefore, be it

#### Art. 2844. Supplementary readers

The Textbook Commission shall have authority to adopt supplementary readers for the first seven grades and such other supplementary books for use in said elementary grades as it may deem advisable. Said other supplementary books may be arranged in a series by said Commission, one book in each series for each elementary grade, and contracts for not more than four series of supplementary books and readers, inclusive, as provided for in this Section, may be in force at the same time; provided, that such series of these supplementary books shall only be used to supplement the basal book on reading and in no case shall supplemental books be adopted for other subjects. Each bidder presenting such book or books shall state at what price it or they are offered; provided, however, that no supplementary books shall be purchased and used to the exclusion of the books prescribed under the provisions of Article 2843, but full use must be made in good faith of the books selected by said Commission under Article 2843 before any of the supplementary books provided for in this Article shall be purchased and used; and provided further that the Textbook Commission shall adopt supplementary readers for the first seven grades for a period of not less than three (3) years nor more than five (5) years and all such adopted supplementary readers shall be subject to readoption after such period; and provided further, that the Textbook Commission shall not authorize the adoption of a new and different series of supplementary readers until in its opinion an imperative necessity exists making such change necessary. As amended Acts 1939, 46th Leg., p. 279.

Effective July 5, 1939.

Section 2 of amendatory Act of 1939 the Act should take effect from and after declared an emergency and provided that its passage.

#### Art. 2844A. German, Czech and French language books—Commercial arithmetic, bookkeeping and typewriting books—Band and orchestra music books—Books containing charters and documents of American Democracy

Section 1. The State Board of Education shall, by a vote of at least six (6) of its members, adopt a multiple list of not fewer than three (3) nor more than five (5) textbooks for use in the public high schools in teaching the German, Czech, and French languages; and shall also by a vote of at least six (6) of its members, adopt, for use in the public high schools, a multiple list of textbooks printed in the English language,

of not fewer than three (3) nor more than five (5) in each of the subjects of commercial arithmetic, bookkeeping, and typewriting. And said Board shall also, by a vote of at least six (6) of its members, adopt for use in the public schools a multiple list of textbooks printed in the English language of not more than five (5) in the subject of Band and Orchestra Music. And said Board shall, by a vote of at least six (6) of its members, adopt for use in the public high schools one (1) or more, not to exceed five (5), books containing the basic charters and documents of American Democracy, both State and Federal, and a discussion of them; said book or books to be used by such schools and in such grades as collateral or supplementary reading in the courses in History and Government and/or in the courses in Political and Social Sciences. As amended Acts 1939, 46th Leg., p. 277, § 1.

Effective 90 days after June 21, 1939,  
date of adjournment of Legislature.

Sec. 2. The State Textbook Commission is hereby empowered to adopt single basal textbooks of a type suitable for junior high schools, provided seven-ninths of the Commission approve the policy; the adoption of the text to be made by six (6) votes as in other adoptions and provided further, that such junior high school textbooks shall be furnished free only to such school systems as maintain junior high school organizations, as certified by the proper school authorities to the State Board of Education. [As amended Acts 1937, 45th Leg., p. 329, ch. 167, § 1.]

Amendatory act of 1937 effective 90 days after May 22, 1937, date of adjournment.

Section 2 of the amendatory act of 1937 repeals all conflicting laws and parts of laws. Section 3 of the amendatory act of 1937 declared an emergency and provided

that the act should take effect from and after its passage.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## CHAPTER SEVENTEEN—TEACHERS' CERTIFICATES

### 1. ISSUANCE OF CERTIFICATES

Art.

2883a. Assignment, transfer, or pledge of compensation of teachers or school employees [New].

### 1. ISSUANCE OF CERTIFICATES

Art. 2883a. Assignment, transfer, or pledge of compensation of teachers or school employees

Section 1. Definition—Teacher and School Employee. The terms "teacher," and "school employee," within the provisions of this Act shall be held and deemed to embrace and include any person employed by any Public School System, Independent School District, or Common School District, in this State in an executive, administrative, or clerical capacity, or as a superintendent, principal, teacher, or instructor, and any person employed by a university or college, or other educational institution in an executive, administrative, or clerical capacity, or as a professor, or instructor, or in any similar capacity.

Sec. 2. An assignment, transfer, pledge, or similar instrument executed by any teacher or school employee, wherein any salary or wages, or any interest therein or part thereof, then due or which may become

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

due to such teacher or school employee under an existing contract of employment, shall be valid and enforceable, provided that such assignment, transfer, or pledge be in writing and acknowledged in the same manner as required for the acknowledgment of a deed or other instrument for registration, and provided further that if such instrument be executed by a married person it shall also be executed and acknowledged by his or her spouse in such manner. Such an assignment, transfer, or pledge shall be valid only to the extent that the indebtedness secured thereby is a valid obligation. Any school district, college, university, or other educational institution, County Superintendent, or any disbursing agent therefor shall be authorized to honor such assignment without being subject to any liability therefor to the teacher or school employee so executing such assignment; and any sum paid to any assignee in accordance with the terms of any such assignment shall be deemed to be a payment to or for the account of such teacher or school employee; but such assignment shall be valid and enforceable only to the extent of any salary which may be due or may become due and earned by such teacher and school employee during the continuance of his or her employment by such school district, college, university, or educational institution.

Sec. 2a. Nothing in this Act shall in any manner affect or repeal any part of Senate Bill No. 401,<sup>1</sup> Acts of the Regular Session of the Thirty-eighth Legislature. Acts 1939, 46th Leg., p. 282.

<sup>1</sup>Senate Bill No. 401 failed to pass.

Filed without the Governor's signature, June 9, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing the execution by teachers and school employees, as defined in this Act, of valid assignments of sal-

aries or wages, or any interest therein, as security for indebtedness, and providing that such assignments shall be valid and enforceable, providing that nothing in this Act shall in any manner affect or repeal any part of Senate Bill No. 401, Acts of the Regular Session of the Thirty-eighth Legislature; and declaring an emergency. Acts 1939, 46th Leg., p. 282.

## CHAPTER NINETEEN—MISCELLANEOUS PROVISIONS

Art.

2904b. College entrance examinations [New].

Art.

2909a. Dormitories, cottages, and stadiums; self liquidating [New].

### Art. 2904b. College entrance examinations

Section 1. The State Superintendent of Public Instruction is hereby authorized and directed to provide for the holding of college entrance examinations throughout the State in the manner hereinafter stipulated.

Sec. 2. The State Superintendent of Public Instruction is hereby authorized and directed to set up such rules, regulations and administrative units necessary to the carrying out and holding of college entrance examinations. He shall keep such records, issue such receipts and make disbursements on forms and in such manner as may be prescribed by the State Auditor and Efficiency Expert.

Sec. 3. The State Superintendent of Public Instruction is hereby authorized and directed to set up a system of fees not exceeding One Dollar (\$1) for any four (4) subjects taken in said examinations, to employ such labor, purchase such materials and provide all necessary expenses to the complete handling of the administrative duties. All fees collected under this Act shall be placed by the State Superintendent of Public Instruction in the General Fund of the State. The examinations herein

provided for shall be held in the counties of the residences of the persons desiring to take such examinations.

Sec. 4. The fees collected by the State Superintendent of Public Instruction shall be based by the State Superintendent of Public Instruction upon the actual cost for the preceding year of the administration of this Act not to exceed One Dollar (\$1) for any four (4) subjects taken in said examination. Acts 1939, 46th Leg., p. 280.

Filed without the Governor's signature April 20, 1939.

Sec. 5 of the act of 1939 provided "There is hereby appropriated out of the General Fund of the State of Texas, not otherwise appropriated, so much money as is necessary to administer this Act from and after its passage for the remaining biennium of 1938-1939 not to exceed the sum of Six Hundred Dollars (\$600) and for the regular biennium September 1, 1939, to September 1, 1941, so much as may be necessary to administer this Act not to exceed the sum of Six Hundred Dollars (\$600) for the fiscal year 1940 and Six Hundred Dollars (\$600) for the fiscal year 1941."

Section 6 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for the holding of college entrance examinations; authorizing and directing the setting up of rules and regulations necessary thereto; providing for the setting up of the system of fees and for the depositing of the same in the General Fund; providing the manner in which said fees shall be set and making an appropriation; and declaring an emergency. Acts 1939, 46th Leg., p. 280.

**Art. 2909a. Dormitories, cottages, and stadiums; self liquidating**

Section 1. The Board of Directors of Texas Technological College, the Board of Directors of the Texas Agricultural and Mechanical College, the Board of Regents of the University of Texas, the board of Directors of the State Teachers' Colleges of Texas, the Board of Directors of the Texas State College for Women, and the Board of Directors of the College of Arts and Industries, are hereby authorized and empowered to erect and equip, and to contract with any person, firm or corporation, for the erection, completion and equipping of dormitories, cottages or stadiums, to be erected either on the campus or real estate then owned by said colleges, or on other real estate purchased or leased for the purpose, and the said Boards of Directors are hereby expressly authorized to purchase, or lease, additional real estate for such purposes, provided said Institutions have sufficient surplus from local funds, but not exceeding twenty-five (25%) per cent of the total for any fiscal year, to pay cash for any purchase of land; or the purchase of land is made from funds derived from the sale of revenue bonds or notes. The bonds or notes authorized herein are to be paid solely from the revenues of the dormitories, cottages and stadium, and shall never be charged against the State nor any appropriation made by the State nor shall any portion of said appropriation ever be used for the payment of said notes or bonds; nor shall any local or institutional funds in excess of twenty-five (25%) per cent of the total for any calendar year ever be used for the payment of said notes or bonds. It being the intention of the Legislature to authorize the payment of said notes and bonds solely from revenues derived from the improvements authorized herein and an emergency to be supplemented from local funds not exceeding twenty-five (25%) per cent for any fiscal year.

Sec. 2. The Boards aforesaid are hereby authorized and empowered to enter into contracts with municipalities or school districts for the joint construction of museums, library buildings, or such other buildings as may be deemed necessary.

Sec. 3. In payment for the erection, completion and equipping of such dormitories, cottages and stadiums, and the purchase of the necessary sites thereto, the Boards aforesaid are further authorized and empowered to issue their obligations in such sum or sums and upon such terms and conditions as to said directors may seem advisable, and as security



for the payment thereof to pledge the net rents, fees, revenues and incomes from the improvements to be erected hereunder. Any bonds or notes issued hereunder shall bear interest at the rate not to exceed six (6%) per cent per annum and shall finally mature not more than twenty years from date.

Sec. 4. The aforesaid Boards are hereby authorized and empowered to pledge the unused part of any revenues from self-liquidating buildings for the construction of additions to said buildings or the construction of any other buildings and the purchase of the necessary sites thereto such Boards may deem necessary, provided that any subsequent issue of revenue bonds or notes shall be a second lien on said net revenues, rents, fees and incomes and shall be inferior to any outstanding revenues, bonds or notes which are secured by a pledge of said net revenues, rents, fees and incomes.

Sec. 5. The Boards aforesaid are hereby authorized and directed to establish and maintain such schedule of rates, fees and charges for the use of the facilities afforded by its dormitories, cottages and stadiums, and the revenue from the athletic fields and stadiums, which rates, fees and charges shall be in an amount at least sufficient to pay the operating and maintenance charges thereof and to pay the principal and interest representing the indebtedness against said revenues, rents, fees and incomes.

Provided that the fees to be charged for the use of any buildings shall not exceed the maximum fee per semester specified in Chapter 459, Acts of the Second Called Session of the Forty-third Legislature, 1935, or Acts amendatory thereto.<sup>1</sup>

<sup>1</sup>Article 2700d—3. note

Sec. 6. In payment for the erection, completion and equipping of such dormitories, cottages and stadium, and the purchase of the necessary sites thereto, the Boards aforesaid shall not in any manner nor to any extent incur indebtedness against themselves or the State of Texas, and the obligation or obligations authorized by this Act shall never be a personal obligation of the colleges above named, or the State of Texas; but such obligations shall be discharged solely from the revenues herein authorized to be pledged for the purpose.

Sec. 7. All revenue bonds shall be examined and approved by the Attorney General of the State of Texas; and the State Auditor shall approve such revenue bonds or revenue notes after an examination of revenues which shows a reasonable prospect of adequate rents, income, fees or charges to pay principal and interest, and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas.

Sec. 8. The aforesaid Boards are hereby empowered to do any and all things necessary and convenient to carry out the purpose and intent of this law.

Sec. 9. It is the intention of the Legislature that the State of Texas shall never be called upon to supplement, by emergency or general appropriation, any of the local funds of any institution which takes advantage of the provisions of this Act. The governing boards of such institutions are directed not to make any appropriation from the local funds of such institutions when in so doing it will necessitate the Legislature supplementing such local funds. It is further provided that the Legislature shall never make an appropriation for the purpose of equip-

ping (including utility connections) or maintaining any building erected under the provisions of this Act. Acts 1939, 46th Leg., p. 259.

Effective June 13, 1939.

Section 10 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 11 reads as follows: "Should any section or any provision or any part of this Act be held invalid, it is hereby declared to be the Legislative intent that the remaining sections, provisions and portions shall not be affected thereby, but will remain effective after omitting such invalid provisions or parts."

Section 12 declared an emergency and provided that the Act should take effect from and after its passage.

Dormitories, see also, arts. 2589a, 2613a-1, 2628a-8, 2628b, 2632a, and 2647a.

**Title of Act:**

An Act authorizing and empowering the Board of Directors of Texas Technological College, the Board of Directors of the Texas Agricultural and Mechanical College, the Board of Regents of the University of Texas, the Board of Directors of the State Teachers' Colleges of Texas, the Board of Directors of the Texas State College for Women, and the Board of Directors of the College of Arts and Industries, to erect

and equip, and contract for the erection and equipment of any dormitories, cottages or stadiums to be self-liquidating from revenues earned from same, authorizing the execution of notes and bonds therefor, and providing in addition to revenues earned by said improvements to allow in the event of an emergency supplementing same from not exceeding twenty-five (25%) per cent. of local funds and authorizing the respective Boards of said Institutions to do any and all things necessary to carry out the provisions of this Act; and providing it to be the intention of the Legislature that the State of Texas shall never be called upon to supplement by emergency or general appropriation any of the local funds of any institution which takes advantage of the provisions of this Act; providing restrictions upon the boards of such institutions with reference to the use of local funds; and providing that no appropriation can ever be made by the Legislature for the purpose of equipping and maintaining any such building; and declaring an emergency. Acts 1939, 46th Leg., p. 259.

## CHAPTER NINETEEN-A—RURAL HIGH SCHOOLS

**Art.**

- 2922a-1. Validating consolidated rural high school districts [New].  
 2922a-2. Validation of consolidated rural high school districts in counties of 48,550 to 48,570 population and 280 to 295 scholastics [New].

**Art.**

- 2922aa. Consolidation of rural high school districts and common school districts authorized [New].  
 2922u(2). Validation of county line rural high school districts [New].

### Art. 2922a-1. Validating consolidated rural high school districts

All Consolidated Rural High School Districts heretofore created or attempted to be created by an act of the County Board of Trustees in creating or attempting to create Consolidated Rural High School Districts out of a district or districts that had been theretofore a Consolidated Common School District or districts are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the Board of Trustees of such districts in ordering and holding elections and declaring the results thereof, and levying taxes therefor, all bonds issued and outstanding and all tax levies made therefor, and all tax assessments, assessment rolls, and tax rolls of such districts, and all bonds heretofore authorized and voted but not yet issued by such districts are hereby validated, ratified, approved and confirmed; provided, that this act shall not apply to any such districts, bonds, tax levies, tax assessments or tax rolls which are now involved in litigation. [Acts 1936, 44th Leg., 3rd C.S., p. 1992, ch. 481, § 1.]

Effective Oct. 27, 1936.

Section 2 of this Act declared an emergency and provided that Act should take effect from and after its passage.

**Title of Act:**

An Act to validate all Consolidated Rural High School Districts created or attempted,

to be created by County Boards of Trustees, validating acts of County Boards of Trustees in creating or attempting to create Consolidated Rural High School Districts out of a district or districts that had been theretofore a Consolidated Common School District or districts, validating all elections,

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tax assessments, assessment rolls, and tax rolls, and the levy of taxes by said school districts, validating all proceedings had in the issuance of bonds and the levying of taxes therefor, validating bonds heretofore

authorized or voted but not yet issued, providing for certain exceptions where litigation is pending, and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 1992, ch. 481.]

**Art. 2922a—2. Validation of consolidated rural high school districts in counties of 48,550 to 48,570 population and 280 to 295 scholastics**

From and after the effective date of this Act, in all consolidated rural high school districts in this State, located in counties having a population of not less than forty-eight thousand, five hundred and fifty (48,550) and not more than forty-eight thousand, five hundred and seventy (48,570), according to the last preceding Federal Census, and where such consolidated rural high school districts, located in such counties, having a scholastic population of not less than two hundred and eighty (280) and not more than two hundred and ninety-five (295), according to the last preceding scholastic enumeration in such districts heretofore created or attempted to be created by an act of the county board of trustees in creating or attempting to create consolidated rural high school districts out of a district or districts that had been theretofore a consolidated common school district or districts are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the board of trustees of such district in ordering and holding elections and declaring the results thereof, and levying taxes thereof, all bonds issued and outstanding and all tax levies made therefor, and all tax assessments, assessment rolls, and tax rolls of such districts, and all bonds heretofore authorized and voted but not yet issued by such districts are hereby validated, ratified, approved and confirmed; provided, that this Act shall not apply to any such districts, bonds, tax levies, tax assessments or tax rolls which are now involved in litigation. Acts 1939, 46th Leg., Spec.L., p. 1036, § 1.

Effective April 18, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act validating the creation or attempted creation of all consolidated rural high school districts in this State, located in all counties having a population of not less than forty-eight thousand, five hundred and fifty (48,550) and not more than forty-eight thousand, five hundred and seventy (48,570), according to the last preceding Federal Census, and where such rural high school districts have a population of not

less than two hundred and eighty (280) and not more than two hundred and ninety-five (295) scholastics, according to the last preceding scholastic enumeration; and providing all acts of the boards of trustees of such districts in such counties, ordering and holding elections, levying taxes, issuing bonds and all tax assessments and rolls of such districts, and all bonds and all other actions by the boards of trustees in such districts, be in all things validated; providing this Act shall not apply to districts now involved in litigation; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 1036.

**Art. 2922aa. Consolidation of rural high school districts and common school districts authorized**

Provided any Rural High School District already formed under the provisions of this law may consolidate with any contiguous Common School District upon an election being held in the respective districts; said election to be held in conformity with Article 2806, Revised Civil Statutes of Texas, 1925. Upon such consolidation said newly formed district shall take the form of said Rural High School District and be governed by the Board of Trustees of said Rural High School District, and shall become a part of said Rural High School District for all intents and purposes as though it were originally a part of said district. Provided that in case of any outstanding bonded indebtedness in either of

said districts an election shall be held in conformity with the General Law governing school districts to determine whether or not said Common School District or Rural High School District shall assume their prorata part of such indebtedness. Provided, however, that said consolidation above referred to shall not become effective until after the election adjusting the bonded indebtedness and in case such election fails to be carried the consolidation shall be held for naught and such districts shall remain in their original status. [As added Acts 1937, 45th Leg., p. 845, ch. 416, § 1.]

Amendment of 1937 effective May 13, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2922l. Tax

The board of a rural high school district provided for in this Act shall have the power to levy and collect an annual ad valorem tax not to exceed One Dollar (\$1) on the one hundred dollars valuation of taxable property of the district for the maintenance of schools therein, and a tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district for the purpose of purchasing, constructing, repairing, or equipping public free school buildings within the limits of such district, and the purchase of necessary sites therefor; providing that the amount of maintenance tax, together with the amount of bond tax of the district shall never exceed One Dollar (\$1) on the one hundred dollars valuation of taxable property; and provided further that no such tax shall be levied and no such bonds shall be issued until after an election shall have been held wherein a majority of the qualified taxpaying voters, voting at said election, shall have voted in favor of the levying of said tax, or of the issuance of said bonds, or both, as the case may be, and which election shall be held in accordance with the law now governing such elections in common school districts, or districts included in a rural high school district or annexed to a common or independent school district, as provided for herein, shall be continued in force until such time as a uniform district or said common or independent district as enlarged by the annexation of the said common school districts thereto. The board of trustees of any rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of said district within the time provided by existing laws, and said assessment shall be equalized by the board of equalization composed of three (3) members appointed by the board of trustees of said district. The said board of equalization shall be composed of legally qualified voters residing in said district, and shall have the same power and authority, and be subject to the same restrictions that now govern such boards in independent school districts. The tax assessor herein provided for shall receive such compensation for his services as the trustees of said district may allow, not to exceed two (2) per cent of taxes assessed by him. The county tax collector shall collect such tax and shall receive one-half of one per cent for his services for collecting such tax. Such tax when collected shall be deposited in the county depository to the credit of such rural high school district. The tax assessor herein provided for shall make a complete list of all assessments made by him, and when approved by the board of trustees shall be submitted to the county tax collector not later than September 1st of each year.

Provided that in counties having a population of less than eight thousand, seven hundred (8,700) and more than eight thousand, five

hundred (8,500) according to the last Federal Census, rural high school districts composed wholly of common school districts, such rural high school districts shall not have the authority to appoint its tax assessor, board of equalization, nor tax collector, and the taxes thereof shall be assessed by the county tax assessor and collected by the county tax collector as in common school districts. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1923, ch. 40, § 1.]

Effective Nov. 3, 1937. the act should take effect from and after  
 Section 2 of the amendatory act of 1937 its passage.  
 declared an emergency and provided that

#### Art. 2922l(2). Validation of county line rural high school districts

Section 1. All county line rural high school districts, created by General Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of the counties in which such districts are located, and heretofore recognized by either State or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees of such districts ordering an election or elections, declaring the results thereof, levying, attempting or purporting to levy taxes for and on behalf of such school districts and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any such district was omitted shall in nowise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such district.

Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected shall be validated by the passage of this Act.

#### Taxation

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act, or acts of said districts, or by any Act, whether General or Special, of the Legislature.

#### Pending litigation, effect on application of act

Sec. 3. This law shall not apply to any district, the organization or creation of which is now involved in litigation. Provided further that this Act shall not apply to any district which may have been established and which has later returned to its original status and has been so recognized by the proper authorities, provided, however, if and when any such litigation shall be finally terminated, in a manner favorable to such district, then this Act shall apply thereto.

#### Partial invalidity

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any

other word, phrase, clause, sentence, paragraph, section, or part of this Act. Acts 1937, 45th Leg., p. 577, ch. 287.

Effective May 5, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to validate the organization and creation of all county line rural high school districts, created by General Law or by County Boards of Trustees; validating the acts of said County Boards of Trustees and Boards of Trustees of such districts; validating all proceedings and acts of said Boards of Trustees; validating all bonds

authorized by said districts; validating all tax levies made in behalf of said districts; authorizing and empowering all school districts mentioned in this Act to levy, assess, and collect the same rate of taxes as is now being levied, assessed, and collected therein, and heretofore authorized or attempted to be authorized by any act, or acts of said districts, or by any Act of the Legislature; making certain exemptions; providing a savings clause, and declaring an emergency. [Acts, 1937, 45th Leg., p. 577, ch. 287.]

## CHAPTER NINETEEN-B—STATE AID FOR RURAL AND SMALL TOWN SCHOOLS

Art.

2922zz—1. State or governmental agencies aiding school districts; declaration concerning corporate bodies affected [New].

**Art. 2922zz—1. State or governmental agencies aiding school districts; declaration concerning corporate bodies affected**

Section 1. Declaration concerning the corporate bodies politic or other governmental agencies to be affected by the Act. Whenever it appears that the consummation of any project by the State of Texas, or by any subsidiary corporate body politic of the State, or by any other governmental agency of the State (all of which, for convenience, hereinafter usually will be referred to as "State agency") has resulted, or will result, in producing in the affairs of any common school district, or independent school district, or other similar tax-supported educational district-creatures of the State (by whatever name they be designated, for convenience to be hereinafter usually referred to as "school district," or "district"), the conditions hereinafter designated; then, there may be exercised by the governing authority of the State's agency having control of any such project, the powers hereinafter established, under the conditions hereinafter defined.

### Conditions existing as basis for aid

Sec. 2. The conditions which must exist as a basis for invocation of the powers of this Act:

(a) The school district has outstanding bonds or other indebtedness, which indebtedness must be paid, in whole or in part, by using the proceeds of ad valorem taxes levied by the district;

(b) It appears that the uncompensated loss of taxable values by the district will unduly burden the property, or the owners of the property, remaining subject to the taxing power of the district; or, if it appears that the district thereafter will not be able to discharge its function as an educational agency of the State, in a manner substantially comparable to that standard theretofore prevailing in the district; and

(c) To be a necessary condition for any relief under the provisions of this Act; the State agency has assurance of revenues to be derived from taxation of property not subject to taxation by one or more school districts conditioned as set forth in this Act, and deemed to be adequate in

amount to afford the relief sought to be provided by this Act, without assuredly impairing the ability of a given affected State agency to discharge its lawfully imposed duties to the State; then:

**Defining powers for relief to be conferred by the act**

Sec. 3. Defining the powers for relief to be conferred by this Act. Whenever there be present in the relations of the State, or a State agency, to a school district concurrence of the conditions specified in Section 2 of this Act, then the governing body (or duly constituted and empowered officer or officers) of the State agency producing distress in the affairs of an affected school district, may exercise discretion to compensate the district and cooperate with it in the manners and within the limits now to be specified, i. e.:

(1) The State or any State agency in this Act specified may pay for the use and benefit of the district a sum of money not to exceed that which would be produced by taxing for a period of not to exceed six (6) years the property of the State agency, at the assessed valuation and at the rate of the district's tax levy for the particular year in which the appropriation of the given property was consummated; however:

(2) In no event shall the compensation to be made hereunder to any given district exceed the amount of its outstanding bonded debt on December 31st of the year during which the State agency may have acquired the property theretofore subject to the district's taxing power, plus a sum of money equal to the amount which will be produced by: Take the assessed value of the property acquired for the year in which it was acquired and apply thereto the rate of tax levied by the district for that year for operating costs (excluding levies for the betterment of the school plant and money to care for funded debt) and extend the amount to be produced in one (1) year for a period of not to exceed six (6) years; provided that compensation to be made hereunder shall be either under the terms of this subdivision (2) or under subdivision (1) foregoing, whichever will result in the smaller amount of compensation; and:

**Taxation of lands of State agencies by school districts**

Sec. 4. Authorizing the rendition of certain lands of State agencies for taxation by school districts. Whenever any State agency in acquiring land for its project acquires land so conditioned that:

- (1) It is not needed to accomplish the objects of the project;
- (2) Its segregation and separate use will not impair the usefulness of the remaining land so acquired; the land when segregated may be made to produce a rental or revenue; or, whenever any land so conditioned is held in anticipation of potential or future (undeveloped) needs, then it shall be lawful for any State agency, through its appropriate governing authority, to subject such land to taxation by a school district eligible for compensation hereunder, until such time as need for the actual use of such land has come into existence.

**Leases by governmental agencies**

Sec. 5. Where the law peculiar to any given State agency does not provide for it a duty differing from that next provided, and the particular governmental agency (not differently directed) owns or controls land subject to lease by others, then:

- (a) Unless advertized as hereinafter provided; no lease upon any such land intended to confer on another the right of use for a period extending to a time later than December 31 of the calendar year in which the term of the particular use begins to run, shall be valid; and:

(b) Expressly excepted from need for advertisement as hereinafter provided for, are lands conditioned as follows:

1. Tracts of land not exceeding ten (10) acres in area;
2. Tracts of land as to which the reasonable lease value will not exceed One Hundred Dollars (\$100) per annum;
3. All lands not intended to be subjected to use in agriculture or grazing, and meaning hereby to provide for the hereinafter stipulated notice only in case of lands intended for use in agriculture and grazing, or leases for terms designated in subdivision (a) of this Section (unless the same may be excepted herefrom by the provisions of subdivision (b) of this Section) must be subjected to preliminary advertisement of the intent to lease the same, under the provisions that: The notice of the intent to lease for the calendar year next to ensue shall be published one time in the month of October of any given year, prior to the fifteenth day of that month, in a newspaper (if such there be) published in and having general circulation in each county in which the State agency may hold such leasable land (in default of a newspaper published in a given county to be published in any newspaper having general circulation therein); and such published notice shall be sufficient if it, in substance, gives fair advice that: The advertising State agency will on a definite date (not earlier than October 25th of the particular year) begin to consider and thereafter continue to consider and determine the proposals for leases which may come to it; and, the notice further shall give advice as to the place or places, person or persons at which or to whom proposals for lease shall be made; further, the notice must state the postal address of the principal office of the given lessor agency and state that any interested person may have full knowledge concerning the lands proposed to be placed under lease, and the proposed terms of the leases, by applying at the address given. Acts 1937, 45th Leg., p. 263, ch. 139.

Effective April 9, 1937.

Section 6 of this act declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act authorizing the State or any subsidiary corporate body politic of the State or any other governmental agency of the State to make compensation to common school districts or independent school districts or other similar tax supported educational district-creatures of the State under certain conditions enumerated in the Act. The principal condition (not meaning hereby to exclude the other conditions specifically set out in the Act) is that the governmental agencies named in the Act are given authority to make compensation or accord aid to school districts when the construction of public improvements by governmental agencies re-

sults to impair the ability of school districts to pay their bonded debts and to properly perform their functions as educational institutions; also limiting the compensation or aid which any enumerated governmental agency may make to a school district which has conditions as set forth in the Act; also authorizing the rendition of certain lands of the State or State governmental agencies for taxation by school districts, and specifying the conditions under which this may be done; also providing for publication of notice of the intent to lease lands of certain State agencies, in certain cases, and specifying the conditions under which, and the form in which, publication must be made; stating the conditions constituting an emergency, declaring the same, and providing that the Act shall have effect immediately after its enactment. [Acts 1937, 45th Leg., p. 263, ch. 139.]

## CHAPTER TWENTY—TEACHERS' RETIREMENT—[NEW]

Art.

2922—1. Teachers' Retirement System—  
Definitions.

### Art. 2922—1. Teachers' Retirement System—Definitions

Section 1. The following words and phrases as used in this Act unless a different meaning is plainly required by the context shall have the following meanings:



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

(1) "Retirement System" shall mean the Teachers' Retirement System of Texas as defined in Section 2 of this Act.

(2) "Public School" shall mean any educational organization supported wholly or partly by the State under the authority and supervision of a legally constituted board or agency having authority and responsibility for any function of public education.

(3) "Teacher" shall mean a person employed on a full-time, regular-salary basis by boards of common school districts, boards of independent school districts, county school boards, Retirement Board of Trustees, State Board of Education and State Department of Education, boards of regents of colleges and universities, and any other legally constituted board or agency of an educational institution or organization supported wholly or partly by the State. In all cases of doubt, the Retirement Board of Trustees, hereinafter defined, shall determine whether a person is a teacher as defined in this Act. A teacher shall mean a person rendering service to organized public education in professional and business administration and supervision and in instruction, in public schools as defined in subsection (2) of this section.

(4) "Taught" shall mean all regular services contributing directly and indirectly to the instruction offered by and through the teachers as defined in subsection (3) of this section.

(5) "Employer" shall mean the State of Texas and any of its designated agents or agencies with responsibility and authority for public education, such as the common and independent school boards, the boards of regents of state colleges and universities, the county school boards, or any other agency of and within the State by which a person may be employed for service in public education.

(6) "Member" shall mean any teacher included in the membership of the system as provided in Section 3 of this Act.

(7) "State Board of Trustees" shall mean the Board provided for in Section 6 of this Act to administer the Retirement System.

(8) "Service" shall mean service as a teacher as described in subsection (3) of this section.

(9) "Prior-Service" shall mean service rendered prior to the date of establishment of the Retirement System.

(10) "Membership Service" shall mean service as a teacher rendered while a member of the Retirement System.

(11) "Creditable Service" shall mean "Prior-Service" plus "Membership Service" for which credit is allowable as provided in Section 4 of this Act.

(12) "Beneficiary" shall mean any person in receipt of an annuity, a retirement allowance or other benefit as provided by this Act.

(13) "Regular Interest" shall mean interest at the rate of three and one-half (3½%) per centum per annum, compounded annually.

(14) "Current Interest" shall mean the mean interest earned annually on investments of retirement funds.

(15) "Accumulated Contribution" shall mean the sum of all the amounts deducted from the compensation of a member, and credited to his individual account in the Teacher Saving Fund together with regular interest thereon as provided in Section 8 of this Act.

(16) "Earnable Compensation" shall mean the full rate of the compensation that would be payable to a teacher if he worked the full normal working time. In cases where compensation includes maintenance, the State Board of Trustees shall fix the value of that part of the compensation not paid in money.

(17) "Average Prior-Service Compensation" shall mean the average annual compensation of a member during the ten (10) years immediate-

ly preceding the enactment of this law, or if he had less than ten (10) years of such service, then his average compensation shall be computed for his total years of such prior-service, but in computing the average, no salary for any one year shall be more than Three Thousand (\$3,000.00) Dollars.

(18) "Annuity" shall mean payments for life actuarially determined and derived from reserve funds contributed by a member and by the State. All annuities shall be payable in equal monthly installments.

(19) "Retirement Allowance" shall mean an annuity or any optional benefit payable in lieu thereof.

(20) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this Act.

(21) "Service Retirement" shall mean the retirement of a member from active service with an annuity or other benefit in lieu of an annuity at any time after reaching age of sixty (60) years.

(22) "Disability Retirement" shall mean withdrawal from active service on a disability allowance any time after twenty (20) years of service in Texas, and before becoming sixty (60) years of age.

(23) "Annuity Reserve" shall mean the present value computed upon the basis of such annuity or mortality tables as shall be adopted by the State Board of Trustees with regular interest, of all payments to be made on account of any annuity or benefit in lieu of any annuity, granted to a member under the provisions of this Act.

(24) "Actuarial Equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the State Board of Trustees, and regular interest.

(25) "School Year" shall mean the year beginning on or about September 1st and ending on or about August 31st.

#### **Name and date of establishment**

Sec. 2. A Retirement System is hereby established and placed under the management of the State Board of Trustees as hereinafter created for the purpose of providing retirement allowances and other benefits under the provisions of this Act for teachers as defined in this Act. The Retirement System so created shall be established as of July 1, 1937.

It shall have the power and privileges of a corporation and shall be known as the "Teacher Retirement System of Texas", and by such name all of its business shall be transacted, all of its funds invested and all of its cash and securities and other property held.

#### **Membership**

Sec. 3. The membership of said Retirement System shall be composed as follows:

(1) All persons who are teachers on the date as of which the Retirement System is established shall become members as of that date as a condition of their employment unless within a period of ninety (90) days after September 1, 1937, any such teacher shall file with the State Board of Trustees on a form prescribed by such Board, a notice of his election not to be covered in the membership of the System and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the Retirement System.

(2) Beginning September 1, 1938, and thereafter any teacher teaching for the first time in Texas shall become a member of the Retirement System as a condition of his employment.

(3) Should any member in any period of six (6) consecutive years after becoming a member be absent from service more than five (5) years, or should he withdraw his accumulated contributions, or should he become a beneficiary, or upon death, he shall thereupon cease to be a member.

(4) Any teacher who elects not to become a member of the Retirement System as herein provided as of September 1, 1937, and the ninety (90) days next following, may make application to become a member at the beginning of any new school year, but without claim for prior-service credit.

(5) Anyone who has taught in the State of Texas in accordance with the terms of this Act, but who is not in service during the year in which the Act becomes effective, shall, if he becomes a teacher within two (2) years of the date on which this Act becomes effective, and if he continues as such for a period of five (5) consecutive years, be entitled to receive credit and resulting benefits for prior-service as provided for in this Act.

#### Creditable service

##### Sec. 4.

(1) Under such rules and regulations as the State Board of Trustees shall adopt each person who was a teacher, as defined in this Act, at any time during the year immediately preceding the establishment of the System, and who becomes a member during the first year of operation of the Retirement System, or who is a member at the beginning of the school year 1937-1938, shall file a detailed statement of all Texas service, as a teacher, rendered by him prior to the date of establishment of the Retirement System for which he claims credit.

(2) The State Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one school year.

(3) Subject to the above restrictions and to such other rules and regulations as the State Board of Trustees may adopt, the State Board of Trustees shall verify and adjust, as soon as practicable after the filing of such statements of service, the service therein claimed.

(4) Upon adjustment and verification of the statements of service, the State Board of Trustees shall issue prior-service certificates certifying to each member the length of Texas service rendered prior to the date of the establishment of the Retirement System, with which he is credited on the basis of his statement of service. So long as membership continues, a prior-service certificate shall be final and conclusive for retirement purposes as to such service, provided, however, that any member may, within one (1) year from the date of issuance or modification of such certificate, request the State Board of Trustees to modify or correct his prior-service certificate.

When membership ceases, such prior-service certificate shall become void. Should the employee again become a member, such a person shall enter the System as a member not entitled to prior-service credit except as provided in Section 5, subsection (5), paragraph (b) of this Act.

(5) Creditable service at retirement on which the retirement allowance of a member shall be based, shall consist of the membership-service rendered by him since he last became a member, and also, if he has a prior-service certificate which is in full force and effect, the amount of the service credited on his prior-service certificate. No member shall be entitled to a retirement allowance until he has accumulated twenty (20) or more years of creditable service in Texas.

**Benefits****Sec. 5.****1. Service Retirement Benefits.**

(a) Any member in service may retire upon written application to the State Board of Trustees. Retirement shall be effective as of the end of the school year then current, provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years.

(b) Any member in service who has attained the age of seventy (70) years shall be retired forthwith, provided that with the approval of his employer he may remain in service.

(c) Paragraphs (a) and (b) of this subsection are limited as follows:

Any member in service on the date upon which this Act becomes effective who has attained the age of seventy (70) years may be retired on September 1, 1938; and any member in service on the date upon which this Act becomes effective who has attained the age of sixty (60), but not seventy (70) years shall not be permitted to make application for retirement until he has been a member of the Retirement System for two (2) years.

**2. Allowance for Service Retirement.**

Upon retirement for service, a member shall receive a retirement allowance in the form of an annuity which shall be the actuarial equivalent of the sum of his savings and the State reserves due him as a condition of his creditable service and membership in the Retirement System. His retirement allowance reserve shall be derived from:

(a) His accumulated contributions credited to his account in the Teacher Saving Fund at the time of retirement; and

(b) An additional sum from the State Accumulation Fund equal to the accumulated contributions provided by the member in paragraph (a) of this subsection; and

(c) If he has a prior-service certificate in full force and effect, an additional annuity reserve fund, the amount of which shall be the actuarial equivalent of an annuity of one (1%) per centum of his average prior-service compensation, as defined in this Act, multiplied by the number of years of Texas service certified in his prior-service certificate; provided that in computing his average prior-service compensation, the maximum number of years of service to be allowed shall be thirty-six (36) years and the maximum prior-service salary Three Thousand (\$3,000.00) Dollars; provided that the State Board of Trustees shall have an actuarial and statistical study made at least once every five (5) years showing annual trends and the probable liabilities and assets; upon the recommendation of the Actuary, the Board shall have the power to reduce or increase the one (1%) per centum to a percentage not below one-third ( $\frac{1}{3}$ ) of one (1%) per centum, nor more than one (1%) per centum of the average prior-service compensation until the resulting reduced liability does not exceed the available assets for prior-service. Provided that if the five-year actuarial investigation reveals further need of reducing said prior-service liabilities in order to strike a balance with available assets during said period for said service, the State Board of Trustees shall reduce the average prior-service salary, and the number of years of prior-service credit so that the total reduction required will fall equally upon said salary and service for the period covered by the report of the Actuary. Provided, further, any adjustment in the amount of prior-service compensation of any member or members of the System made by the Trustees, shall be over a period of years of not less than five (5), nor more than seven (7). Available assets shall mean that part of the State Accumula-

tion Fund not required as reserves to meet prospective liabilities calculated to accrue annually over a limited number of years on account of service retirement reserves and disability retirement reserves.

(d) It is expressly provided that the prior-service compensation herein provided for shall be a mutual agreement on the part of the State of Texas and the teacher-member of the Retirement System, and in no event shall the failure of the State Board of Trustees to make adjustments for which total funds are not available for payment of prior-service and disability benefits be held as a liability against the State of Texas.

(e) It is further provided that any funds remaining on hand at the end of each five-year period based upon the actuarial and statistical study herein provided for and which shall not be needed to meet the accrued liabilities of the State for prior-service reserves and disability benefits, shall revert to the General Treasury of the State of Texas as of August 31st of said year.

### 3. Disability Retirement Benefits.

Upon the application of a member in service, or of his employer or his legal representative acting in his behalf, any member who has had twenty (20) or more years of creditable service may be retired by the State Board of Trustees, not less than thirty (30) and not more than ninety (90) days next following the date of filing such application, on a disability retirement allowance, provided, that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

### 4. Allowance on Disability Retirement.

Upon retirement for disability, a member shall receive a service retirement allowance if he has attained the age of sixty (60) years, otherwise he shall receive a disability retirement allowance which shall be the actuarial equivalent of the sum of funds derived from sources as follows:

(a) From the accumulated contributions of the member standing to his account in the Teacher Saving Fund at the time of his retirement; and

(b) An additional amount from the State Accumulation Fund equal to the accumulated contributions provided by the member in paragraph (a) of this subsection; and

(c) If he has a prior-service certificate in full force and effect, an additional amount which shall be equal to fifty (50%) per centum of the award for such prior-service as herein computed.

### 5. Beneficiaries Retired on Account of Disability.

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the State Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or any other place mutually agreed upon, by a physician or physicians designated by the State Board of Trustees. Should any disability beneficiary who has not yet attained the age of sixty (60) years refuse to submit to at least one medical examination in any such periods by a physician or physicians designated by the State Board of Trustees, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1)

year, all his rights in and to his annuity shall be revoked by the State Board of Trustees.

(a) Should the Medical Board report and certify to the State Board of Trustees that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, or that such disability beneficiary is engaged in or is able to engage in a gainful occupation, and should the State Board of Trustees by a majority vote concur in such report, then the amount of his annuity shall be discontinued or reduced to an amount by which the amount of the last year's salary of the beneficiary, as a teacher, exceeds his present earning capacity. Should his earning capacity be later changed, the amount of his annuity may be further modified; provided, that the revised annuity shall not exceed the amount of the annuity originally granted which, when added to the amount earnable by the beneficiary, equals the amount of his compensation for the last year prior to retirement.

(b) Should a disability beneficiary under the age of sixty (60) years be restored to active service, his retirement allowance shall cease, he shall again become a member of the Retirement System, and any annuity reserves on his retirement allowance at that time in the Annuity Reserve Fund shall be transferred to the Teacher Saving Fund and to the State Accumulation Fund, respectively, in proportion to the original sums transferred from his account to the Annuity Savings Fund at retirement. Upon restoration to membership any prior-service certificate on the basis of which his service was computed at the time of his retirement, shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his membership service. No teacher eligible to retire for service at sixty (60) years of age shall be allowed to retire on a disability allowance. If the disability beneficiary shall be removed from the disability list for any cause, the unused part of the reserves for the annuity purchased from his accumulated contributions shall be transferred to the Teacher Reserve Fund and the State Accumulation Fund, respectively, and disposed of as provided for in this Act.

#### 6. Return of Accumulated Contributions.

Should a member cease to be a teacher except by death or retirement under the provisions of this Act, he shall be paid in full the amount of the accumulated contributions standing to the credit of his individual account in the Teacher Saving Fund. Should a member die before retirement, the amount of his accumulated contributions standing to the credit of his individual account shall be paid as provided by the laws of descent and distribution of Texas unless he has directed the account to be paid otherwise. Seven (7) years after such cessation of service, if no previous demand has been made, any accumulated contributions of a contributor shall be returned to him or to his heirs. If the contributor or his heirs cannot then be found, his accumulated contributions shall be forfeited to the Retirement System and credited to the Permanent Retirement Fund.

#### 7. Optional Allowances.

With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any service benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his retirement al-

lowance in a reduced retirement allowance payable throughout life with the provision that:

Option (1). Upon his death, his reduced retirement allowance shall be continued throughout the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (2). Upon his death, one-half ( $\frac{1}{2}$ ) of his reduced retirement allowance shall be continued through the life of, and paid to such person, as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at or before the time of his retirement; or

Option (3). Some other benefit or benefits shall be paid either to the member, or to such person or persons as he shall nominate, provided such other benefit or benefits, together with the reduced service retirement allowance, shall be certified by the Actuary to be of equivalent actuarial value to his retirement allowance, and approved by the State Board of Trustees.

#### Administration

##### Sec. 6. State Board of Trustees.

(1) The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of the Act are hereby vested in a State Board of Trustees which shall be organized immediately after a majority of the Trustees provided for in this Section shall have qualified and taken the oath of office.

(2) The Board shall consist of six (6) Trustees as follows:

(a) The State Life Insurance Commissioner, ex-officio.

(b) The Chairman of the State Board of Control of Texas, ex-officio.

(c) A person selected by the State Board of Education for a term of six (6) years.

(d) Three (3) of the Trustees shall be members of the Retirement System and shall be nominated by the members of the Retirement System for a term of six (6) years each according to such rules and regulations as the State Board of Trustees shall adopt to govern such nominations, provided that the first three (3) teachers to serve as members of the State Board of Trustees shall be appointed by the Governor from a list of seven (7) teachers nominated by the Executive Committee of the Texas State Teachers Association. The terms of office of the first three (3) teacher-trustees shall begin immediately after they have qualified and taken the oath of office. They shall draw for terms of two (2), four (4), and six (6) years, which shall expire August 31, 1939, and August 31, 1941, and August 31, 1943, respectively. Thereafter, the State Board of Trustees shall provide for the nomination of three (3) teacher-members biennially by popular election of the members of the Retirement System, from which the Governor shall appoint one member to the State Board of Trustees; said member shall be subject to confirmation by two-thirds ( $\frac{2}{3}$ ) vote of the State Senate. The members so appointed shall serve for terms of six (6) years, or until their successors are qualified.

(3) If a vacancy occurs in the office of a Trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(4) The Trustees shall serve without compensation, but they shall be reimbursed from the Expense Fund for all necessary expenses that they may incur through service on the Board.

(5) Each Trustee shall, within ten (10) days after his appointment, in addition to the constitutional oath, subscribe to the following oath of office: "I do solemnly swear that I will, to the best of my ability, discharge the duties of a Trustee of The Teacher Retirement System and will diligently and honestly administer the affairs of the Board of Trustees of said Retirement System and that I will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to said Retirement System." This oath shall be subscribed to by members making it before any officer qualified to administer oaths in Texas, and duly filed in the office of the Secretary of State.

(6) Each Trustee shall be entitled to one vote in the Board. A majority of the State Board of Trustees shall constitute a quorum and a majority vote of those present shall be necessary for a decision by the Trustees at any meeting of said Board.

(7) Subject to the limitations of this Act, the State Board of Trustees shall, from time to time, establish rules and regulations for eligibility of membership and for the administration of the funds created by this Act and for the transaction of its business.

(8) The State Board of Trustees shall elect from its membership a Chairman, and shall by a majority vote of all its members appoint an Executive Secretary who shall not be one of its members. Provided that the Executive Secretary appointed under the provisions of this Act shall be confirmed by a two-thirds ( $\frac{2}{3}$ ) vote of the Senate present and provided further that said Executive Secretary shall have been a citizen of Texas three (3) years immediately preceding his appointment. He shall recommend and nominate to the State Board of Trustees such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the State Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System shall be paid at such rates and in such amounts as the State Board of Trustees shall approve, provided that in no case shall they be greater than that paid for like or similar service of the State of Texas.

(9) The State Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the expenses of the System.

(10) The State Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding school year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

#### Legal Adviser.

(11) The Attorney General of the State of Texas shall be the legal advisor of the State Board of Trustees, and shall represent it in all litigations.

#### Medical Board.

(12) The State Board of Trustees shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the Retirement System. The physicians so appointed by the State Board of Trustees shall be legally qualified to practice medicine in Texas and shall be physicians of good standing in the medical profession. If required, other physicians may be employed to report on special cases. The Medical Board shall pass upon all medical examinations required under the provisions of this Act, and shall investigate all essential statements and certificates by or on behalf of a member in connection with



an application for disability retirement, and shall report in writing to the State Board of Trustees its conclusion and recommendations upon all the matters referred to it.

**Duties of Actuary.**

(13) The State Board of Trustees shall designate an Actuary who shall be the technical adviser of the State Board of Trustees on matters regarding the operation of the funds created by the provisions of this Act, and shall perform such other duties as are required in connection therewith.

(14) Immediately after the establishment of the Retirement System, the Actuary shall make such investigation of the mortality, service, and compensation experience of the members of the System as he shall recommend and the State Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the State Board of Trustees such tables and such rates as are required. The State Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter, the Actuary shall make a valuation based on such tables and rates, of the assets and liabilities of the funds created by this Act.

(15) In the year 1938, and at least once in each five-year period thereafter, the Actuary shall make, under the direction of the Board, an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the State Board of Trustees shall adopt for the Retirement System such mortality, service, and other tables as shall be deemed necessary; and certify the rate per centum which shall be allowed in calculating amounts of prior-service reserves to be credited to the account of each member at retirement.

(16) On the basis of such tables as the State Board of Trustees shall adopt, the Actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Act.

**Management of funds**

Sec. 7. (1) The State Board of Trustees shall be the trustees of the several funds as herein created by this Act, and shall have full power to invest and reinvest such funds subject to the following limitations and restrictions: All retirement funds, as are received by the Treasury of the State of Texas from contributions of teachers and employers as herein provided, may be invested only in bonds of the United States, the State of Texas, or counties, or cities, or school districts of this State, wherein said counties, or cities, or school districts have not defaulted in principal or interest on bonds within a period of ten (10) years, or in bonds issued by any agency of the United States Government, the payment of the principal and interest on which is guaranteed by the United States; and in interest bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40, Acts of the Forty-third Legislature, Second Called Session;<sup>1</sup> provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amounts that may become due each year as provided in this Act. The State Board of Trustees shall have full power by proper resolution to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds,

provided that any money on hand shall be subject to the State Depository Laws of Texas.

(2) The State Board of Trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the Expense Fund as herein provided. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the State Board of Trustees from interest and any other earnings on the moneys of the Retirement System held in the Interest Fund. Any additional amount required to meet the regular interest on the funds of the Retirement System shall be paid from the interest reserve account of the Permanent Retirement Fund, as herein provided, and any excess of earnings over such amount required shall be paid to the interest reserve account of the Permanent Retirement Fund.

(3) The Treasurer of the State of Texas shall be the custodian of all bonds, securities, and funds. All payments from said funds shall be made by him on warrants drawn by the State Comptroller of Public Accounts supported only upon vouchers signed by the Secretary of the Retirement System and the Chairman of the State Board of Trustees. A duly attested copy of a resolution of the State Board of Trustees designating such persons shall be filed with said Comptroller as his authority for issuing such warrants.

(4) For the purpose of meeting disbursements for annuities and other payments there may be kept available cash, not exceeding ten (10%) per centum of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer.

(5) No trustee and no employee of the State Board of Trustees shall have any direct or indirect interest in the gains or profits of any investment made by the State Board of Trustees, nor as such receive any pay or emolument for his service other than his designated salary and authorized expenses, except such interest as such person or persons may have in the retirement funds as a member in the Retirement System.

#### Method of financing

Sec. 8. The amount contributed by each teacher to the Retirement Fund shall be five (5%) per centum of the regular annual compensation paid each member, the amount not to exceed One Hundred Eighty (\$180.00) Dollars per annum. The amount contributed by the State of Texas to the Retirement Fund shall not exceed during any one year five (5%) per centum of salaries of all members, disregarding salaries in amounts in excess of Three Thousand Six Hundred (\$3,600.00) Dollars, provided the total amount contributed by the State during any one (1) year shall equal the total amount contributed during the same year by all members of the Retirement System.

All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one (1) of six (6) funds, namely, the Teacher Saving Fund, the State Accumulation Fund, the Annuity Reserve Fund, the Interest Fund, the Permanent Retirement Fund, and the Expense Fund.

##### 1. The Teacher Saving Fund.

(a) The Teacher Saving Fund shall be a fund in which shall be accumulated regular five (5%) per centum contributions from the compensation of members, including regular interest earnings. Contributions to and payments from the Teacher Saving Fund shall be made as follows:

(b) Each employer shall cause to be deducted from the salary of each member on each and every pay roll of such employer for each and every pay roll period, five (5%) per centum of his earnable compensation, provided that the sum of the deductions made for a member shall not exceed One Hundred Eighty (\$180.00) Dollars during any one (1) year. Deductions shall begin with the first pay roll period of the school year 1937-1938. In determining the amount earnable by a member in a pay roll period, the State Board of Trustees may consider the rate of annual compensation payable to such member on the first day of the pay roll period as continuing throughout such pay roll period, and it may omit deduction from compensation for any period less than a full pay roll period if a teacher was not a member on the first day of the pay roll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth ( $\frac{1}{10}$ ) of one (1%) per centum of the annual compensation upon the basis of which such deduction is to be made.

(c) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The employer shall certify to the State Board of Trustees on each and every pay roll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Teacher Saving Fund, and shall be credited, to the individual account of the member from whose compensation said deduction was made.

(d) Interest on members' contributions will be credited annually as of August 31st and will not be allowed for parts of a year. Following the termination of membership in the Retirement System for those members who have been absent from service for five (5) years in any period of six (6) consecutive years, the Teacher Saving Fund account of such members shall be closed and warrants covering the total accumulated contributions sent to them upon the filing of formal application. Until the time of payment of such accumulated contributions, said teacher shall receive no interest on the amount due him under this subsection, and the amount shall be held in a non-interest-bearing account to be set up for such purpose.

(e) Upon the retirement of a member, his accumulated contributions shall be transferred from the Teacher Saving Fund to the Annuity Reserve Fund.

## 2. State Accumulation Fund.

The State Accumulation Fund shall be the fund in which shall be accumulated all contributions made to the Retirement System by the State of Texas; and from which shall be transferred at retirement of a member to the Annuity Reserve Fund, all annuity and benefit reserves due a member from this Fund as a condition of his creditable service and membership at retirement. Contributions to and payments from this Fund shall be made as follows:

(a) The State of Texas shall pay annually into the State Accumulation Fund an amount equal to five (5%) per centum of the sum of the pay roll compensation of all members of the Retirement System from

the source and in the manner prescribed in subsection (7) of this Section.

(b) The State Accumulation Fund shall be divided for actuarial and administrative purposes, into two (2) ledger accounts as follows: (1) the membership-service account; and (2) the prior-service account. During the first year of the operation of the Retirement System and periodically thereafter as provided for in this Act, the adjustments of rates and formulas used in making calculations of amounts to be transferred on account of prior-service shall be based on studies made by the Actuary so that a balance between liabilities and assets of the two (2) accounts may be maintained and that equalizing reserves for each five-year period or more shall be created and maintained in the prior-service account of this fund.

(c) Upon the retirement of a member, an amount equal to his accumulated contributions in the Teacher Saving Fund shall be transferred from the membership-service account of the State Accumulation Fund to the Annuity Reserve Fund as a membership-service reserve for his retirement allowance; and an additional amount mechanically calculated shall be transferred from the prior-service account of the State Accumulation Fund to the Annuity Reserve Fund at retirement as provided for in section 5, subsections (2) and (3), paragraph (c) of this Act.

### 3. Annuity Reserve Fund.

The Annuity Reserve Fund shall be the fund in which shall be held all reserves for annuities granted and in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this Act. This fund shall be made up of transfers as follows:

(a) At the time of service retirement the accumulated contributions of a retiring teacher shall be transferred from the Teacher Saving Fund to the Annuity Reserve Fund as reserves for annuities purchased by his contributions.

(b) An amount equal to the accumulated contributions of each retiring teacher shall be transferred, upon service retirement, from the State Accumulation Fund as reserves for an additional annuity equal to the annuity purchased by the teacher, as provided for in section 5, subsection (2), paragraph (b) of this Act, and in subsection (a) next above.

(c) Reserves for prior-service annuities granted under this Act shall be transferred from the State Accumulation Fund as calculated in Section 5, subsection (2) paragraph (c) of this Act, and as provided for in subsection (2) of this section.

(d) The accumulated contributions of teachers retired for permanent disability shall be transferred from the Teacher Saving Fund to the Annuity Reserve Fund upon retirement.

(e) Reserves for the remainder of the disability allowances shall be transferred from the State Accumulation Fund in the manner prescribed in Section 5, subsection (4), paragraphs (b) and (c) of this Act, and as provided for in subsection (2) of this Section.

Transfers from the Annuity Reserve Fund shall be made as follows: Should a beneficiary retired on account of disability be restored to active service or be removed from the disability list for any cause, the unused part of his annuity reserves shall be transferred from the Annuity Reserve Fund to the respective funds as provided for in Section 5, subsection (5), paragraph (b) of this Act.

#### 4. Interest Fund.

The Interest Fund is hereby created to facilitate the crediting of uniform interest in the various other funds with the exception of the Expense Fund. All income, interest, and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on August 31st, regular interest shall be allowed and transferred to the other funds, respectively, except the Expense Fund. The State Board of Trustees shall annually transfer to the credit of the interest reserve account of the Permanent Retirement Fund all excess earnings after other funds have been duly credited with regular interest for the year in the manner provided in this Act.

#### 5. Permanent Retirement Fund.

The Permanent Retirement Fund shall be a fund in which shall be accumulated all gifts, awards, funds, and assets accruing to the Retirement System not specifically required by other funds created by this Act, and to provide a contingent fund out of which special requirements of other funds may be covered. The principal of this Fund is hereby held and dedicated as a perpetual endowment of the Retirement System and shall not be diverted or appropriated to any other cause or purpose. All regular interest credited to this Fund and excess interest earnings transferred to this Fund shall be held as an interest reserve account from which payments shall be made as follows:

(a) The State Board of Trustees shall reserve and transfer such amount as may be required to guarantee regular interest on the mean amounts of investments of the funds created in this Act, except the Expense Fund.

(b) The said Board shall transfer annually from the interest reserves of this Fund to the Expense Fund such amount as is required to provide for the administration and maintenance of the Retirement System, provided the funds are available.

#### 6. Expense Fund.

The Expense Fund shall be the fund from which the expenses of administration and maintenance of the Retirement System shall be paid. Transfers to and payments from this Fund shall be made as follows:

(a) The Executive Secretary shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the State Board of Trustees for its review and adoption.

(b) Each member shall pay with the first payment to the Teacher Saving Fund each year, and in addition thereto, a sum of One (\$1.00) Dollar; which amount shall be credited to the Expense Fund, said payments for the Expense Fund shall be made to the State Board of Trustees in the same way as payments to the Teacher Saving Fund shall be made, as provided for in this Act.

(c) If the amount estimated to be required to meet the expenses of the State Board of Trustees is in excess of One (\$1.00) Dollar per contributor for the year, the amount of such excess shall be paid from the interest reserve account of the Permanent Retirement Fund. If in the judgment of the State Board of Trustees, as evidenced by a resolution of that Board recorded in its minutes, the amount in the interest reserve account of the Permanent Retirement Fund exceeds the amount necessary to cover the ordinary requirement of that Fund for a period of five (5) years in the future, the Board may transfer to the Expense Fund such excess amount not exceeding the entire amount required to cover the expenses as estimated for the year.

(d) The sum of Twenty-five Thousand (\$25,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated from the General Revenue Fund of the State not otherwise appropriated for the purpose of organizing the Retirement System and establishing an office. This sum shall be credited to said Expense Fund.

7. Collection of Contributions.

(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every pay roll of a member for each and every pay roll period subsequent to the date of establishment of the Retirement System the contributions payable by such member, as provided in this Act. Each employer shall certify to the treasurer of said employer on each and every pay roll a statement as vouchers for the amount so deducted.

(b) The treasurer or proper disbursing officer of each employer on authority from the employer shall make deductions from salaries of teachers as provided in this Act, and shall transmit monthly, or at such time as the State Board of Trustees shall designate, a certified copy of the pay roll, and the amount specified to be deducted shall be paid to the Executive Secretary of the State Board of Trustees, and after making a record of all receipts, the said Board shall pay them to the Treasurer of the State of Texas, and by him be credited to Teacher Retirement Fund, and such funds shall be deemed as appropriated for use according to the provisions of this Act. For the purpose of collecting contributions of teachers who are teaching in common school districts, the county superintendent or ex-officio county superintendent of each county of this State is hereby designated to perform the duties of employer of all common school districts over which he has jurisdiction, and he is hereby authorized and empowered to retain the amounts so deducted from pay rolls of members and have a corresponding amount deducted from any funds available for paying teachers' salaries, and transmit same to the Executive Secretary of the State Board of Trustees as provided for in this Act. Any college or university or other educational institution or agency supported in whole or in part by the State shall have the amount retained or deducted from the funds regularly appropriated by the State for the current maintenance for such educational departments and institutions.

(c) For the purpose of enabling the collection of five (5%) per centum of the salaries of the members of the Retirement System to be made as simple as possible, the State Board of Trustees shall require the secretary or other officer of each employer-board or agency, within thirty (30) days after the beginning of each school year, to make up a list of all teachers in its employ, who are members of the Retirement System, set out their salaries by the month and by the year, make an affidavit to the correctness of this statement, and file the same with the Executive Secretary of the State Board of Trustees of the Teacher Retirement System. If additions to or deductions from this list should be made during the year, such additions or deductions shall likewise be certified under oath to the State Board of Trustees of the Teacher Retirement System.

(d) The State Treasurer shall furnish annually to the State Board of Trustees a sworn statement of the amount of the funds in his custody belonging to the Retirement System. The records of the State Board of Trustees shall be open to public inspection and any member of the Retirement System shall be furnished with a statement of the amount to the credit of his individual account upon written request by such member, provided that the State Board of Trustees shall not

be required to answer more than one such request of a member in any one year.

(2) The collection of the State's contributions shall be made as follows:

(a) On or before the first day of November, next preceding each Regular Session of the Legislature of Texas, the State Board of Trustees shall certify to the State Board of Control for its review and adoption, the amount necessary to pay the contribution of the State of Texas to the Teacher Retirement System for the ensuing biennium. This amount shall be included in the budget of the State, which the Governor submits to the Legislature. Provided, however, that no appropriation shall be made by the Legislature out of the General Funds of the State of Texas for the payment of benefits as herein provided for. Payments can only be made out of special taxes levied as authorized in the Constitutional amendment for the retirement of teachers.

(b) The State Board of Trustees shall certify one-quarter ( $\frac{1}{4}$ ) of the amount so ascertained for each year to the State Comptroller and to the Treasurer of the State on or before the last day of December, February, May, and September. Upon proper resolution by the Board of Trustees the Comptroller shall on or before the first day of January, March, June, and October, draw a warrant or warrants on the Treasurer of the State of Texas for the respective amounts due the State Retirement System. On the receipt of the warrant of the Comptroller, the Treasurer of the State of Texas shall immediately transfer to the State Retirement System the amount due the State Accumulation Fund on account of the State, as provided in this Act.

#### Exemptions from execution

Sec. 9. The right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the moneys in the various funds created by this Act, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Act specifically provided.

#### Protection against fraud

Sec. 10. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a felony, and shall be punished as provided for under the laws of Texas. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the State Board of Trustees shall correct such error, and so far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

#### Surety bonds

Sec. 11. The Treasurer of the State of Texas shall, upon becoming custodian of the Teacher Retirement Fund, give a bond in the sum of Fifty Thousand (\$50,000.00) Dollars; the Executive Secretary shall give bond in the sum of Twenty-five Thousand (\$25,000.00) Dollars, and the State Board of Trustees shall require any other employees and mem-

bers of the State Board of Trustees to give bond in such amounts as the Board may deem necessary, conditioned that said bonded persons will faithfully execute the duties of the respective offices. All bonds shall be made with a good and solvent surety company, authorized to do business in the State of Texas, said bonds shall be made payable to the State Board of Trustees and shall be approved by it and the Attorney General of Texas. All expense necessary and incident to the execution of such bonds, including premiums thereon, shall be paid by the State Board of Trustees from the Expense Fund.

**Limitation on membership**

Sec. 12. No other provision of law in any other statute which provides wholly or partly at the expense of the State of Texas for pensions or retirement benefits for teachers of the said State, their widows, or other dependents, shall apply to members or beneficiaries of the Retirement System established by this Act.

**Reservation of right to amend**

Sec. 13. The Legislature hereby reserves the right to amend any section, paragraph or any and all provisions of this Act as it may from time to time deem necessary.

**Partial invalidity and repeal of inconsistent laws**

Sec. 14. If any section or part of any section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency. Acts 1937, 45th Leg., p. 1178, ch. 470.

**1 Article 2603d.**

Effective June 9, 1937.

Section 15 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Appropriation and use of donations for retirement fund, see art. 2683a of this title.

Acts 1939, 46th Leg., p. 281, filed without governor's signature May 1, 1939, declared an emergency and provided that all provisions of this act "which relate to the operation of the Teachers' Retirement Fund and the expenditure of funds collected thereunder be, and the same are hereby extended up to and including August 31, 1939."

**Title of Act:**

An Act to carry into effect Section 48a of Article III of the Constitution; to establish a Teachers' Retirement System of Texas; to determine membership and conditions of membership in said System; to provide for a Board of Trustees of said System and for the administration of its affairs; to provide for officers and a Med-

ical Board and to define their duties; to provide for the adoption of actuarially-made mortality, service and other tables as may be deemed necessary; to provide for the creation, management and distribution of the Teacher Reserve Fund, the State Accumulation Fund, the Annuity Reserve Fund, the Interest Fund, the Permanent Retirement Fund, and the Expense Fund of the said System; and to provide a method of financing said System; providing that no appropriation shall ever be made by the Legislature out of the General Funds for the payment of retirement benefits; and providing that such payments can only be made out of special taxes levied as authorized in the Constitutional Amendment for the retirement of teachers; making an appropriation of Twenty-five Thousand (\$25,000.00) Dollars out of the General Revenue Funds of the State of Texas not otherwise appropriated, and declaring an emergency. [Acts 1937, 45th Leg., p. 1178, ch. 470.]



## TITLE 50—ELECTIONS

### CHAPTER ONE—MISCELLANEOUS PROVISIONS

Art.

2929a. Commencement of term of office  
[New].

#### Art. 2929a. Commencement of term of office

From and after the effective date hereof the terms of office of all elective State and District officers of the State of Texas, excepting Governor, Lieutenant Governor, Members of the Senate, and Members of the House of Representatives, shall begin on the 1st day of January next following the General Election at which said respective State and District officers were elected. Acts 1937, 45th Leg., p. 1320, ch. 486, § 1.

Section 2 of this act declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing for the beginning of

the terms of certain State and District offices of the State of Texas; and declaring an emergency. Acts 1937, 45th Leg., p. 1320, ch. 486.

### CHAPTER THREE—OFFICERS OF ELECTION

Art.

2942a. Selection of supervisor for election precinct; qualification and duties [New].

#### Art. 2940. 2922 Disqualifications

No one who holds an office of profit or trust under the United States or this State, or in any city or town in this State, or within thirty (30) days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for office, or who has not paid his Poll Tax, shall act as judge, clerk or supervisor of any election; nor shall any one act as chairman or as member of any District, County or City Executive Committee of a political party who has not paid his Poll Tax, or who is a candidate for office, or who holds any office of profit or trust under either the United States or this State, or in any city or town in this State; or who may be enjoying gratuitous passage on street cars or on other public service corporations, by reason of his appointment as a special policeman; or any one who has any connection, whatever, with the city, whereby the city is justified in issuing to any such person free transportation on the street cars, or franks entitling him to the free use of public service corporations, or any person who is regularly employed in any capacity by the city for whose services a salary or wages is paid, except a notary public. As amended Acts 1939, 46th Leg., p. 295.

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of laws.

#### Art. 2942a. Selection of supervisor for election precinct; qualification and duties

Upon petition of forty (40) of the qualified voters but not to exceed five (5) per cent of any election precinct or ward, the Chairman of the County Executive Committee or any three (3) members of such Committee may not less than five (5) days before such election select a super-

visor for such election precinct who, when selected, shall be sworn as an election officer. Said supervisors shall be qualified voters in that particular election precinct and shall be selected from the list of voters signing such petition. While the election is being held such supervisors shall remain in view of the ballot boxes until the count is concluded. It shall be their duty to be present at the marking by the Judge of said election of the ballot of any voter not able to mark his own ballot, to see that said ballot is marked in accordance with the wishes of the voter, and to see that such ballot is correctly counted. Said supervisors shall note any fraud or irregularity occurring and report same to the next Grand Jury. The supervisor appointed by virtue of the provisions of this Act shall be compensated by the citizens upon whose petition they were appointed. Added Acts 1937, 45th Leg., p. 381, ch. 188, § 1.

Section 2 of this act declared an emergency making the act effective on and after its passage.

#### Art. 2943. 2925-26 Pay of judges and clerks

Judges and Clerks of general and special elections shall be paid Three Dollars (\$3) a day each, and Thirty (30) Cents per hour each for any time in excess of a day's work as herein defined; provided that in all counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding or any future Federal Census, such Judges and Clerks shall be paid Five Dollars (\$5) a day each, and Fifty (50) Cents per hour each for any time in excess of a day's work as herein defined. The Judge who delivers the returns of election immediately after the votes have been counted shall be paid Two Dollars (\$2) for that service, provided the polling place of his precinct is at least two (2) miles from the courthouse, and provided also he shall make returns of all election supplies not used when he makes return of the election. Ten (10) working hours shall be considered a day within the meaning of this Article. The compensation of Judges and Clerks of general and special elections shall be paid by the County Treasurer of the county where such services are rendered upon order of the Commissioners Court of such county. As amended Acts 1937, 45th Leg., p. 591, ch. 295, § 1.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

The amendatory act of 1937 added the proviso in the first sentence of this section. It also inserted the numbers in parentheses.

### CHAPTER FOUR—ORDERING ELECTIONS, ETC.

Art.

2951a. Election of judges and clerks and appointment of supervisors of elections in cities of 200,000 to 260,000 population—number and compensation [New].

Art. 2951a. Election of judges and clerks and appointment of supervisors of elections in cities of 200,000 to 260,000 population—number and compensation

Section I. All elections for the election of city officers in all cities in this State having a population in excess of two hundred thousand (200,000) and less than two hundred and sixty thousand (260,000) for the last preceding Federal census or any future Federal census shall be held by election officers elected in the following manner:

(1) The election officers in all such elections shall be elected by the Mayor and Commissioners by ordinance duly adopted in open meeting not less than ten (10) days before an election and shall be qualified voters of said city and of the precinct in which they are to serve.

(2) There shall be elected not more than two (2) judges and two (2) clerks in precincts having less than two hundred (200) qualified voters, and not more than two (2) judges and four (4) clerks in precincts having more than two hundred (200) qualified voters. The number of qualified voters in each precinct and the qualifications of voters for the purposes of this Act shall be determined from the poll tax list prepared by the County Tax Collector of the county in which such city is situated for the year ending January 31st next preceding such election.

(3) Any local political party desiring the appointment of persons as judges and clerks in any such city election shall file with the City Clerk of said city, fifteen (15) days before said election is to be held, one list of prospective judges and clerks, giving the name, street address, and precinct number of each person. Each list shall name not more than five (5) qualified voters of each precinct and shall be signed by the candidate for Mayor or two (2) candidates for Commissioner of the local party proposing same. Each such list shall be filed with the City Clerk and preserved by the City Clerk for a period of ten (10) years as one of the records of his office, and shall be open at all times for public inspection. The Mayor and Commissioners shall elect an equal number of judges and clerks for each precinct from each of said lists so filed by the different political parties so as to give equal representation to each local political party, whenever the number of names submitted by each of the local political parties is sufficient for this purpose. Whenever the number of local political parties is such that an exact division cannot be made of the judges and clerks in each precinct, then equal representation shall be given in all precincts where it is possible and some representation is to be given each party in all other precincts where it is possible, with preference to the parties in the order in which the lists are filed with the City Clerk. For the purpose of this Act a "local political party" shall be held to include any candidate for Mayor when he is running independently or any two (2) candidates for Commissioner when they are running independently, or the candidates for Mayor and Commissioner who are running on the same ticket, provided that the candidate or candidates file with the City Clerk thirty (30) days before the election a petition or petitions signed by five hundred (500) qualified voters endorsing their candidacy. The signatures to such petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving street and number. One of the signers of each paper shall make oath before some officer authorized to administer oaths, that each signature to the paper appended is the genuine signature of the person whose name it purports to be, and a copy of such petition when certified to by the City Clerk shall be admissible in evidence in any Court and be prima facie proof that the signatures appearing thereon are the genuine signatures of the persons whose names they purport to be. Within five (5) days from the date of filing of such petition, the City Clerk shall examine the same and from the list of qualified voters of the City, heretofore mentioned, ascertain whether or not said petition is signed by the requisite number of qualified voters, and he shall attach to said petition his certificate showing the result of such examination, stating the number of qualified voters found upon said petition, and the number of persons not qualified to vote. In checking said petition the City Clerk shall designate the names of persons found thereon not qualified to vote, with the letters: "D. V." in red ink, op-

posite such name or names. If, by the Clerk's certificate, the petition is shown to be insufficient, it may be amended within ten (10) days from the date of said certificate. The Clerk shall within five (5) days after such amendment is filed with him, make a like examination and check off the names thereon and if his certificate shall show the same to be insufficient, it shall be returned to the candidate filing the same without prejudice, however, to the filing of a new petition to the same effect, provided the new petition be filed not later than thirty (30) days before the date of the election.

(4) When at any time there has been only one list of prospective judges and clerks filed with the City Clerk by a local political party, or if at any time only one of the lists so filed contains the names of qualified voters residing in a particular precinct, then any forty (40) qualified voters of any such precinct may sign a petition, giving their names, and street addresses, and file same with the City Clerk five (5) days before said election, submitting the names of five (5) qualified voters of said precinct as election officers and the Mayor and Commissioners shall, two (2) days before such election elect one judge and one clerk from the five (5) names so submitted in said petition. The petition shall be sworn to by one of the signers to the effect that all signatures appearing thereon are the signatures of the persons whose names they purport to be and a copy of any such list when certified to by the City Clerk shall be admissible in evidence in any Court and be prima facie proof that the signatures appearing thereon are the genuine signatures of the persons whose names they purport to be.

(5) If at any time the list or lists of persons filed with the City Clerk fails to name a sufficient number of qualified voters to fill the election offices in any precinct or if those officials elected fail or refuse to serve and there is a vacancy or vacancies after all the qualified voters for the precinct appearing on any of said lists have been elected, then the Mayor and Commissioners shall have the power to appoint as a substitute any qualified voter of the particular precinct who shall thereupon serve as an election official in the place of the person who is disqualified or has failed or refused to serve.

Section 2. In all such cities as defined in Section 1, any candidate for Mayor running independently or any two (2) candidates for Commissioner running independently or a candidate for Mayor and Commissioners who are running on the same ticket may by written petition addressed to the Mayor and Commissioners of any such city and filed with the City Clerk fifteen (15) days before any such election, request the issuance in blank of credentials for two (2) supervisors for each of the voting precincts in such city and the Mayor and Commissioners of said city shall ten (10) days before such election issue to the candidate or candidates the number of credentials for supervisors requested in each petition numbered as to precincts and with the name of the supervisor left blank. The candidate or candidates to whom such credentials are issued in blank shall have the right as agent for the Mayor and Commissioners to insert the name of any duly qualified voter of the precinct for which such credential is issued and deliver such credential to the person named therein and such person shall thereupon be a duly appointed supervisor for such election. The person so appointed shall present such credential to the presiding judge of his precinct on election day and shall take an oath, to be administered by the presiding judge, that he will mention and note any errors he may see in listing or counting the votes and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities that he may observe to the next grand jury.

While the election is being held such supervisors shall be permitted to sit conveniently near the judges and they shall remain in view of the ballot boxes until the vote is counted, and ballot boxes are locked and sealed and safely returned to the City Clerk. It shall be their duty to be present at the marking by the judge of said election of the ballot of any voter not able to mark his own ballot, to see that said ballot is marked in accordance with the wishes of the voter and to see that such ballot is correctly counted. Said supervisors shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularities or violation of the law that he may observe, provided however, that the supervisors shall assist the election officers whenever additional help is necessary for the proper conduct of the election and when they have been requested to do so by the presiding judge. The supervisor appointed under the provisions of this Act shall be compensated by the candidate who delivers him his credentials.

Sec. 3. Judges and clerks in all such cities as defined in Section 1 shall be paid Five Dollars (\$5) a day each and Fifty (50) Cents per hour each for any time in excess of a day's work as herein defined. The judge who delivers the returns of election immediately after the votes have been counted shall be paid Two Dollars (\$2) for that service provided he shall make returns of all election supplies used when he makes returns of the election. Twelve (12) working hours shall be considered a day within the meaning of this Act. The compensation of judges and clerks shall be paid out of the city treasury. No supervisors shall be paid by the city.

Sec. 4. The portions of all laws, charter provisions, and ordinances that are in conflict with the provisions of this Act are hereby repealed.

Sec. 5. If any provision of this Act shall be held invalid, it shall not be construed to invalidate other provisions of the Act. Acts 1939, 46th Leg., Spec.L., p. 726.

Section 6 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act regulating the election of judges and clerks and the appointment of supervisors; prescribing their number and rates of pay and the duties of supervisors in all elections for the election of officers in all cities in this State having a population in excess of two hundred thousand

(200,000) and less than two hundred and sixty thousand (260,000) by the last preceding Federal census or any future Federal census; providing for its enforcement; providing for partial invalidity; repealing all the portions of laws, charter provisions and ordinances in conflict therewith; defining a local political party, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 726.

## CHAPTER FIVE—SUFFRAGE

### Art. 2965. 2949-50 Form of receipt

Each poll tax receipt and its duplicate shall show the name of the party for whom it was issued, the payment of the tax, the age and race of the taxpayer, and length of time the taxpayer has resided in the State and whether the taxpayer is a citizen of the United States, and if so, whether a native born or a naturalized citizen of the United States, and the State of the United States or the foreign country where the taxpayer was born, the length of time the taxpayer has resided in the county, the voting precinct in which the taxpayer lives, except when in an unorganized county, the taxpayer's occupation and post-office address, or if living in an incorporated city, the ward, street, and number of residence

in such city or town. The poll tax receipt shall be in the following form and numbered consecutively in each book provided for in this title:

Poll Tax Receipt No. \_\_\_\_\_

State of Texas

County of \_\_\_\_\_

Received of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, the sum of \$\_\_\_\_\_ in payment of poll tax for year A. D. 19\_\_\_\_, the said taxpayer being duly sworn by me, says that he (she) is \_\_\_\_\_ years old, that he (she) resides in voting precinct No. \_\_\_\_\_, in \_\_\_\_\_ County, that his (her) race is \_\_\_\_\_, that he (she) is a native born (naturalized) citizen of the United States, and was born in \_\_\_\_\_ County, \_\_\_\_\_ State, that he (she) has resided in Texas \_\_\_\_\_ years and in \_\_\_\_\_ County \_\_\_\_\_ years, that he (she) is by occupation \_\_\_\_\_, and that his (her) post-office address is \_\_\_\_\_ (if in an incorporated city or town, a blank word must be printed for the ward, street, and number of residence in lieu of his (her) post-office address, and length of time he (she) has resided in such city or town)

All of which I certify: (Signed) \_\_\_\_\_  
(Seal)

If from the information on the poll tax receipt above required, it appears that the party receiving the same is an alien, he shall be given a receipt from a book specially prepared for alien taxpayers, which book is hereinafter provided in this Title, and the Tax Collector and the Commissioners Court or other authorities providing said poll tax receipt shall have printed on the face of said receipt the word "alien," which said printing shall not be less than two (2) inches in height, superimposed in outline type, and printed in red ink. As amended Acts 1939, 46th Leg., p. 296, § 1.

Section 2 of the amendatory act of 1939 amended art. 2970 and section 3 amended art. 2975, post.

Sections 4, 5, and 6 prescribing penalties for violating the provisions of the act as to poll tax receipts and as to alien poll

taxpayers, appear as Vernon's Rev. Pen. Code arts. 200a-1, 200a-2, and 200a-3, respectively.

Section 7 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2970. 2956 Poll tax books

Each Commissioners Court, before the first day of October every year, shall furnish to the County Tax Collector blank books for each voting precinct, which shall be marked with the name and number of the precinct for which they are intended; each book shall contain a sufficient number of blank poll tax receipts for each precinct not in a city of ten thousand (10,000) inhabitants or more, and not exceeding three hundred and fifty (350) blank poll tax receipts and certificates of exemption for each precinct in a city of ten thousand (10,000) inhabitants or more, of which not more than sixty (60) shall be certificates of exemption, and a greater or less number of each in same proportion when sufficient for the voters of the precinct. Each receipt and certificate shall, in such book, be bound immediately over a duplicate copy which when filled out shall correspond with the receipt or certificate in its number and name, length of residence in the State and County, and the voting precinct, race, occupation, and post-office address of the citizen to whom the tax receipt or certificate of exemption is given. If the voting is in the city, the receipt or certificate and duplicate must show the ward, street, and number, if numbered, of the citizen's residence (in lieu of post-office address) and the length of time he has resided in

such city; the receipt and certificates shall be numbered in consecutive order. Similar blank books of poll tax receipts shall be furnished to such unorganized county attached to such county for judicial purposes, except that the voting precinct need not appear therein. When the tax receipt or certificate is delivered to the citizen, it shall be detached from the book and retained by him for his future use and identification in voting, and at the time said books are made, the Commissioners Court shall prepare a separate book for each precinct as herein provided which shall be marked "Alien Poll Tax Receipt Book" and if the tax certificate provided for in Article 2965 of this Chapter discloses that said applicant is an alien then the Tax Collector shall issue from the book marked "Alien Poll Tax Receipt Book" a receipt to said applicant which shall have printed on the face of said receipt the word "alien" not less than two (2) inches in height, superimposed in outline type, printed in red ink, and in order that the Tax Collector may carry out this provision, it shall be the duty of the Commissioners Court to provide the separate book as herein set out and have the receipt prepared in said book in conformity with the above provision. As amended Acts 1939, 46th Leg., p. 296, § 2.

Section 1 of the amendatory acts of 1939 amended art. 2965, ante; section 3 amended art. 2975, post; sections 4-6 being penal provisions are published as Penal Code, arts. 200a-1 to 200a-3 and section 7 declared an emergency.

#### Art. 2975. 2961 Lists of voters

Before the first day of April every year, the County Tax Collector shall deliver to the Board that is charged with the duty of furnishing election supplies separate certified lists of citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order and to each name its appropriate number as shown by the duplicate retained in his office with a description of the voter as to his residence, his voting precinct, length of his residence in the State and County, his race, occupation, and post-office address, if not in a city of more than ten thousand (10,000) inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the Tax Collector shall also deliver to said Board before the first day of April of each year as many certified lists of the electors resident in such unorganized county or counties who have paid their poll tax or received their certificates of exemption as there are election precincts in his county, which lists shall be identical with those of poll taxpayers in his own county, except that the voting precinct shall not be stated. The Tax Collector of any county containing a town or city of more than ten thousand (10,000) inhabitants shall also furnish to said Board, not less than four (4) days prior to any Primary or General Election, supplemental lists in the form herein prescribed of all poll taxpaying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in other precincts in the same county. Said Board shall furnish each presiding Judge of a precinct the certified lists and supplemental lists of the voters of his precinct at the time when it furnishes other election supplies.

At the time the Tax Collector makes up his lists of voters as herein provided, he shall at the same time on a separate list make up a list of alien poll taxpayers and shall mark at the top of said list the words "Alien Poll Taxpayers," and such list shall be delivered at the same time and the same manner and to the same officials as hereinabove provided for other poll tax lists, and the lists of qualified voters in said county

and in the various precincts of said county. Such certified lists of qualified voters and lists of alien taxpayers shall be in the following form:

No. \_\_\_\_\_  
 Name \_\_\_\_\_  
 Precinct \_\_\_\_\_  
 Age \_\_\_\_\_  
 Length of Residence \_\_\_\_\_  
 Occupation \_\_\_\_\_  
 Race \_\_\_\_\_  
 Length of Residence in City and Ward \_\_\_\_\_  
 Street and Number of Residence \_\_\_\_\_  
 Post-office Address \_\_\_\_\_

And the same form shall be used with reference to the list of alien taxpayers furnished the officials as provided in this Article. As amended Acts 1939, 46th Leg., p. 296, § 3.

Section 1 of the amendatory act of 1939 provisions are published as Penal Code, amended art. 2965 and section 2 amended arts. 200a—1 to 200a—3 and section 7 declared an emergency. art. 2970, ante; sections 4-5 being penal

## CHAPTER SEVEN—ARRANGEMENTS AND EXPENSES OF ELECTION

Art.

2997b. Transportation of voting machines;  
 counties of 300,000-355,000 [New].

Art. 2997a. Providing for voting machines

**Sec. 3. Adoption by Commissioners' Court.** The Commissioners Court of any county in the State of Texas may adopt for use in elections and primary elections in at least three (3) of the larger voting precincts in voting strength in said county, any kind of voting machine approved by the Secretary of State and may adopt such voting machine at any time for use in such additional voting precincts in the county as it may deem advisable, and thereupon such voting machine shall be used at any and all elections and primary elections, municipal, county, district, or State held in that county or any part thereof, designated for voting, registering and counting votes cast at such elections and primary elections, all school and bond elections also shall be conducted by the use of voting machines in those counties or parts thereof where such machines have been adopted, where the law specifically makes their use obligatory. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 1.

**Sec. 5. Providing Voting Machines; Generally; Division of Counties, Towns, etc., into Election Precincts.**—The County Commissioners of a county which has adopted voting machines for that county or any portion thereof, shall as soon as practicable, and in no case later than six (6) months after adoption thereof, provide for each voting precinct designated one or more approved voting machines in completed working order, and shall thereafter preserve and keep them in repair. The Commissioners' Court of any county in the State of Texas, which has adopted voting machines for that county or any portion thereof may, if they deem it proper, at each August term of court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, containing any number of qualified electors, each of which precincts shall be differently numbered and described by natural, or artificial boundaries or survey lines by an order to be entered upon the minutes of



the court. They shall immediately thereafter publish such order in some newspaper in the county for three (3) consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. No election precinct shall be formed out of two or more Justice Precincts nor out of the parts of two or more Justice Precincts. The Commissioners' Court shall cause to be made out and delivered to the County Tax Assessor and Collector, before the first day of each September, a certified copy of such last orders for the year following. The Commissioners' Courts, in establishing new election precincts, shall divide any city or town into as many election precincts as they may see proper. Cities and towns and towns and villages incorporated under the general laws shall not necessarily constitute election precincts. No precinct shall be made out of parts of two (2) wards. As amended Acts 1939, 46th Leg., p. 301, § 1.

**Sec. 6. Payment for Voting Machines.**—The County Commissioners Court shall provide for the payment of voting machines to be used in such county in such manner as the Court may deem for the best interest of the county, and for the purpose of paying for voting machines, such Commissioners Court is hereby authorized to issue bonds, and certificates of indebtedness, warrants, or other obligations to be used for this purpose and no other, which shall be a charge against the county, such bonds, certificates of indebtedness, or other obligations, may be issued with or without interest payable at such time or times as the Commissioners Court may determine, but shall never be issued nor sold for less than par; provided, however, that such Commissioners Court shall issue such bonds, certificates of indebtedness, warrants, or other obligations, to be used for the purpose of payment of voting machines in the same manner and with the same authority as provided for the issuance of warrants, bonds, certificates of indebtedness, or other obligations, by the General Laws of this State. The necessary tax shall be set aside at the time of creating such obligation so as to meet the debt provisions of the Constitution; provided, however, that should the Commissioners Court of any county deem it for the best interest of such county, said Commissioners Court is hereby authorized to contract for the renting of voting machines by such county for use in elections for a term of not more than two (2) years in any one contract of rental. Upon the expiration of such term of contract of rental such Commissioners Court may renew and/or extend same from time to time. Such contracts shall be made only after advertising for bids in the manner provided by the General Laws controlling the purchases made by such county for county purposes, provided and except, however, the Commissioners Court of any county is hereby authorized to accept proposals of rental and/or sale of voting machines after advertising as provided by law wherein the rentals paid by such county for the use of such voting machines or a part thereof may be applied on the purchase price of such machines upon such Commissioners Court determining that it is to the best interest of such counties so to do. Such voting machines shall be the property of the county paying for same and/or renting same, subject to the terms of the rental contract, and when used in any election or primary election, the county is not charged by law with the holding of, such machines shall be leased to the authorities charged with holding such election or primary election, and payment shall be received by the county at such lease price per machine for each election day such machines are used in an election as the Commissioners Court shall fix, but not to exceed ten (10) per cent of the original cost of such voting machine, as may be required to hold each election or primary election. The term each election or primary election, as herein used, shall mean each election day such machines are used for voting

purposes in such elections, and the Commissioners Court in fixing such lease price shall fix a lease price, and payment for same shall be received by the county, for each day such machines are actually used for voting in such election or primary election, and in the event a runoff election or primary runoff election is held, such lease price shall be paid to the county for each whether the same be the first election or primary election or the second and/or runoff election or second and/or runoff primary; and those charged with the holding of such election or primary election shall pay the lease price whether it be a school board, a municipality, a political party, or any other organization or authority. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 2.

**Sec. 7. Absentee Voting.**—In counties in which voting machines are adopted for use, the authority charged with holding an election shall with- in its discretion determine by proper resolution and/or order whether or not voting machines shall be used for the casting of absentee votes at such election and if it be determined by such authority that voting machines shall be used for the casting of absentee votes at such election, a voting machine or machines shall be placed in the County Clerk's office, if an election held at the expense of the county, or if a primary election, and if a city or town election in the office of the city or town secretary and if a school district or other election, in a public place designated within the boundaries of such district or election, with the ballot of the election thereon as required by law and those entitled under the law, shall cast their vote on such machine or machines as the case may be, under the laws not applicable to absentee voting; except that the machine or machines shall be sealed at the close of the day's voting in the presence of authorized watchers, of all persons interested, if any, and such seal shall be broken in the presence of such authorized watchers, if any, the following morning when voting shall begin, by the person authorized by law and charged as the authority holding such election. When absentee voting is legally concluded at an election or primary election, such voting machines shall be locked and sealed in the manner prescribed for precincts, to be kept intact until 7 A. M. of the day of the election or primary election, at which time the machine or machines shall be opened and the vote canvassed by the Election Board holding such election as provided by law, and if a primary election, by the Chairman and the Executive Secretary of the Executive Committee of the political party holding same, and the results of such canvass shall be returned by sealing and delivering same to the proper authority as provided by law and such results and/or returns shall be tabulated and canvassed in the same manner and together with the tabulation and canvassing of the returns from other voting precincts; however, provided that the results of such absentee votes shall not be announced or made public until after 7 P. M. of the day of the election, or primary election, when such results shall be announced and made public together with the general results of the election by proclamation of same as provided by law. Upon such machine and/or machines in use for absentee voting being opened and the vote canvassed, the same shall be immediately prepared and set for voting as provided by law and shall be used, if necessary, in any voting precinct of said election or primary election, then being held. Should the authority charged with holding an election determine by such resolution as above provided, that absentee votes cast at such election be cast by a paper ballot, then, and in such event, the authority charged with holding such election shall provide a ballot for the casting of absentee votes as prescribed and provided by the general laws applicable to elections and to absentee voting and those entitled under the law shall cast their vote

by such ballot under the laws applicable to absentee voting, providing, however, that on the day of such election and in the presence of the election officers one of the judges of election shall, between the hours of 2 P. M. and 3 P. M. open the carrier envelope only as provided by the laws applicable to absentee voting, announce each and every one of the electors' names and compare the signature upon the application with the signature upon the affidavit on the ballot envelope. In case the election judges find the affidavits duly executed, that the applicant is a duly qualified elector of the precinct and that he has not voted in person at said election, they shall open the envelope containing the elector's ballot in such manner as not to deface or destroy the affidavit thereon, take out the ballot therein contained in the presence of the watchers, if any, without permitting same to be unfolded or examined. Such absentee ballot shall thereupon be endorsed by the presiding officer of such voting precinct in such election and deposited in an "Absentee Ballot Box", providing for such purpose and the name of each elector voting such absentee ballot shall be entered in the poll list and numbered the same as if he had been present and voted in person as such absentee ballots are deposited in said absentee ballot box. After all such absentee ballots have been deposited in such absentee ballot box, the officers of such election shall designate such of their number as will not interfere with the uninterrupted use of voting machines by the voters during said election, to thereupon immediately proceed to open such absentee ballot box, count and/or tally such absentee ballots, and return the canvass thereof together with the canvass and returns of the votes cast on voting machines and on the forms as provided by law. Such tally and/or count of such absentee ballots shall be completed and be available for the making of returns at the time of the closing of the polls at such election. If the ballot be challenged by any election officer, supervisor, watcher, party challenger or other person, the grounds of challenge shall be heard and decided according to law including the consideration of any affidavits submitted in support of or against such challenge, provided, however, that all challenges to absentee votes shall be made prior to the casting thereof and if the ballot be not admitted, there shall be endorsed on the back thereof the word "rejected", and if the ballot be admitted, the words, "absentee voter" shall be set down opposite the elector's name on the poll list. All rejected ballots shall be enclosed, securely sealed in an envelope on which words, "rejected absentee ballots" have been written together with the statement of the precinct and the date of the election, signed by the judges and clerks of election and returned in the same manner as provided for the return and preservation of official ballots voted at such election and shall be held by the County Clerk, City Secretary or other person provided by law, thirty (30) days and as much longer thereafter as any court or reviewing authority may direct. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 3; Acts 1939, 46th Leg., p. 301, § 2.

**Sec. 8. Form of Ballots on Voting Machines.**—All ballots shall be printed in black ink on white clear material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. In general elections, the party name and a designating letter and number shall be affixed to the name of each candidate, and the name of all candidates of one political party shall be so arranged that a voter may be able to cast his ballot for such candidates as he may desire or to cast one ballot for all the candidates of that political party. In primary elections, however, the ballot shall be so arranged and the lever so locked as to prevent the voting of straight tickets. Should there be so many candidates and/or propositions to be voted

upon in any election as to exceed the capacity of one machine, more than one machine shall be provided for each voting precinct but in all cases where more than one machine is used in a voting precinct, the names of all candidates for any particular office shall be placed on one machine; provided, however, that the authorities charged with holding the election where in their discretion more than one voting machine is necessary to accommodate the number of voters voting in a voting precinct, then, and in that event, as many voting machines shall be provided for each voting precinct as such authorities deem necessary and the same form of ballot containing the names of all candidates and/or propositions arranged in the same manner shall be provided for each machine, and each of the machines so used in each voting precinct shall be identified by alphabetical designation, and in such event, the number placed opposite or along side of the name of each voter after the voter cast his ballot, corresponding to the number on the public numbering counter as herein provided, shall include such alphabetical designation of the machine on which such voter cast his vote. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 4; Acts 1939, 46th Leg., p. 301, § 3.

**Sec. 9. Sample Ballots.**—The authorities charged with holding the election or primary election may provide for each precinct two sample ballots and one model arranged in the form of a diagram showing such part of the face of the voting machine as shall be in use in that election or primary election. Such sample ballots and model shall be on display in each precinct voting place throughout the time the polls are open and attention shall be especially called to them before each voter uses machine. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 5.

**Sec. 10. Preparation of Voting Machines.**—It shall be the duty of the County Clerk of each county where voting machines are used, to cause the proper ballot labels to be placed on voting machines, to cause the machines to be placed in proper order for voting, to examine all voting machines in the presence of authorized watchers for any interested persons, before they are sent out to the polling places, to see that all the registering counters are set at zero (000), to lock, in the presence of authorized watchers, all voting machines so that the counting machinery cannot be operated and to seal each one with a numbered seal, a list of which numbered seals and the number on the protective counters, together with the number of the precinct to which it was sent, shall be kept as a permanent record open to any citizen, in the records of the County Clerk. Such inspection and sealing of voting machines shall begin within five (5) days of the day before any election or primary election at which such machines are to be used, and continue until all such machines are sealed. When all machines are locked and sealed, the key to each machine shall be placed in an envelope and sealed, the signature of the County Clerk and the signatures of two (2) watchers of opposed interest, if there be such, placed across the seal, and on the envelope shall be written the number then on the protective counter and the number of the seal of the voting machine, such envelope to be delivered to the presiding officer of each precinct.

It shall be the duty of the Sheriff in an election which the county is charged with the expense of, the duty of the County Chairman in the primary election, the duty of the Mayor in a city election, the duty of the president of a school board in a school election, and the duty of the authority holding such election or primary election of any character, to have delivered a voting machine or machines, to each and every polling place where same is required by law to be used, at least one hour before the time set for the opening of the polls in such voting precinct. After

the machine has been delivered, the same authority shall cause such machine to be set up in the proper manner and cause protection to be given so such machine shall be free from molestation and injury. The same authority shall cause to be delivered with each such machine an auxiliary light where necessary properly prepared to be lighted in emergency, so arranged that the light from such will illuminate the face of the machine sufficiently that a voter may be able to read all the names on such machine, and suitable for officers in examining counters. The protective hood and screen of the machine shall be examined to see that they conceal the actions of the voter properly, while such voter is operating the machine. All poll lists and necessary supplies shall be delivered to the presiding officer at the same time the key or keys to the machine are delivered. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 6.

**Sec. 13. General Provisions.**—The presiding officer shall be in general charge of the poll and shall see that one or more of the clerks of the election properly checks off the name of each voter from the poll list before such voter casts his ballot and shall provide for the numbering of tickets by placing a number on a list containing the names of each voter kept for such purposes, corresponding to the number on the public numbering counter opposite or along side of the name of each voter including the alphabetical identification of each machine used in such voting precinct after such voter casts his ballot; that the poll tax certificate or exemption certificate of the voter is stamped "Voted" with the date of the particular election or primary election with the rubber stamp provided under the law, or writes "Voted" with the date, with pen and ink if no rubber stamp be provided, and it shall further be the duty of one of such clerks to see that the voting machine is not tampered with and shall attend the machine at all times. He shall inspect the ballot labels after each voter leaves the machine to see that none have been tampered with and to see that the machine has not been injured. He shall see that the coverings of the counter compartments of the machine are never unlocked nor opened so the counters are exposed during voting except for good and sufficient reasons, a statement of which shall be made and signed by all authorized persons in the polls and attached to the returns. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 7; Acts 1939, 46th Leg., p. 301, § 4.

**Sec. 18. Canvass of the Vote and the Proclamation of the Result.**—As soon as the polls are closed, officials thereat shall immediately lock the machine against voting. They then shall sign a certificate stating that the machine was locked and sealed, giving the exact time; such certificate giving the number of voters shown on the public counters, which shall be the total number of votes cast on such machine in that precinct; the number on the seal; the number registered on the protective counter. (This also shall be the procedure at the close of absentees voting when the machines are used for absentee voting prior to election day.) They then shall open the counting compartment in the presence of the watchers, and at least one representative of any newspaper or press association which cares to be represented, giving full view of all the counter numbers. The presiding officer shall under the scrutiny of the watchers, in the order of the offices as their titles are arranged on the machines, read and announce in distinct tones the designating number and letter on each counter for each candidate's name, and the result as shown by the counter numbers, and shall then read the votes recorded for each office on the irregular ballots. He shall also in the same manner announce the result on each Constitutional amendment, bond proposition, or any other question voted on. The vote as registered

shall be entered on the statements of canvass in ink by two (2) watchers of opposing interest (if there be such) and verified by the three (3) election officials, such entries to be made in the same order on the space which has the same designating number and letter, after which the figures shall again be verified by being called off in the same manner from the counters of the machines by watchers of opposed interest (if there be such). The returns of the canvass as required by law shall then be filled out, verified, and shall show the number of votes cast for each candidate, the number of votes cast for and against any proposition submitted, and shall be signed by the three (3) election officials and at least two (2) watchers of opposed interest (if such there be). The counter compartments of the voting machine shall remain open throughout the time of the making of all statements and certificates and the official returns and until such have been fully verified, and during such time any candidate or his representative or any representative of any newspaper or press association shall be admitted. The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the presiding officer, who shall read the names of each candidate, with the designating number and letter of his counter, and the vote registered on such counter; also the vote cast for and against each proposition submitted. During such proclamation ample opportunity shall be given to any person lawfully entitled to be in the polls, to compare the results announced with the counter dials of the machine and any necessary corrections shall then and there be made, after which the doors of the voting machine shall be locked and sealed with the seal provided, so sealing the operating lever of the machine that the voting and counting mechanism will be prevented from operation. Irregular ballots, properly sealed, and signed shall be filed with the original statement of canvass, which canvass shall be delivered in the same manner and to the same authorities as now provided by law. The presiding officer shall deliver to the County Clerk the keys of the machine enclosed in a sealed envelope across the seal of which shall be written his own name together with that of at least two (2) watchers of opposed interest (if such there be) or the two (2) other election officials, and on this envelope shall be recorded the date of the election or primary election, the number of the precinct, the number of the seal with which the machine was sealed, the number of the public counter and the number of the protective counter. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 8.

**Sec. 20. Preservation of Ballots and Records of Voting Machines.**—The voting machine shall remain locked against voting for a period of ten (10) days and then shall have the seal broken only on the order of a District Judge having jurisdiction in that county, such order to be entered on the minutes of the District Court of that county, and if in the opinion of such District Judge, contest is likely to develop, shall remain locked for such time as the District Judge may direct; provided, however, such time shall not be for a period of time that will interfere with or prohibit the use of such machines in a subsequent election. Except, that on the order of any Court of competent jurisdiction or on the order of any legislative body the seal may be broken for the purposes of proper investigation and when such investigation is completed, the machine shall again be sealed and across the envelope containing the keys shall be written the signature of the persons or person having broken same. Irregular ballots shall be preserved in the same manner and for the same length of time as now provided by law for other ballots. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 9.

**Sec. 23. Application of Other Laws; Fraud and Perjury.**—The provisions of all other laws relating to the conduct of elections or primary elections, shall so far as practicable, apply to the conduct of elections and primary elections where voting machines are used, unless herein otherwise provided; provided, however, it is declared to be the public policy of this State that the provisions herein, providing for the use of voting machines at elections, are regulations to detect and punish fraud, and to preserve the purity of the ballot box; and any voter who fraudulently or illegally casts a ballot, or who casts a fraudulent or illegal ballot upon a voting machine, at any election (after the casting of such fraudulent or illegal ballot, or such fraudulent or illegal casting of a ballot has been established by final adjudication before a court of competent jurisdiction and by competent evidence), shall be compelled and required to disclose the names of the candidate or candidates for whom he cast such ballot at such election, and the ballot cast by him upon any question or questions at such election in any proceedings instituted under the laws of this State in any court of competent jurisdiction, and whoever in such proceedings shall swear and/or testify falsely, shall be deemed guilty of the offense of perjury, and shall be subject to the penalties provided for such offense by the laws of this State. As amended Acts 1939, 46th Leg., p. 301, § 5.

**Sec. 24. Representation.**—The authorities charged with holding an election or primary election are directed wherever possible, in the naming of election officers, to name for each precinct a presiding officer and a clerk for such precinct, of opposed interest in that election, or primary election, the third official also a clerk who should be, wherever possible, nonpartisan. But each political party concerned in an election is entitled to name one watcher for each voting precinct where voting machines are used, said watcher to be recognized by the presiding officer, of that precinct upon the presentation of a certificate signed by the County Chairman of that political party, and any candidate for a State office, the State Senate, any candidate for Representative in the House of the Legislature of Texas, or any candidate for District Judge, or any one-fifth of the candidates for county offices, or any one-fifth of the candidates for precinct offices; or any candidate for mayor, or any candidate for city commissioner in municipalities, or any three (3) candidates in a school election, or the proponents or the opponents of a bond issue, may name one watcher for each precinct in an election or primary election for each precinct where voting machines are used. Any candidate for the United States Senate or Representative in the House of the United States Congress may name one watcher for each election precinct where a voting machine is used. The candidate desiring representation by a watcher shall sign a certificate setting out the name of the person, the number of the precinct where such watcher is to serve, such certificate to bear the signature of the candidate or candidates entitled to representation, together with the signature of the bearer. The presiding officer of the election must require a counter signature and preserve the certificate of the bearer to make certain he is the identical person referred to in the certificate, but cannot for any other reason refuse to permit such watcher to serve. For their services election officials and employees shall be paid a sum to be set by the authority charged with holding the election or primary election, but not less than the amount set now by law and not more than Ten Dollars (\$10) per day, provided, however, that no election official shall be paid more than the prorata part of two (2) hours overtime after the polls are closed. Watchers, a necessary adjunct to an election with voting machines, may be paid by the

interest they represent, but not to exceed Ten Dollars (\$10) per day, provided, however, that the authority holding such election shall not pay for the services of such watchers. As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 10.

**Sec. 25. Definitions.**—The list of candidates and offices and/or propositions to be voted for or against, used or to be used on the front of the voting machine shall be deemed official ballots for the purpose of precincts using machines.

The provisions of this Act shall apply only in counties in which such voting machine is adopted for use at elections.

The word "ballot" as used herein means that portion of the cardboard or other material within the ballot frames containing the name of the candidate and the office, or statement of a Constitutional Amendment, bond issue or other propositions with words "yes" or "no" for voting for or against, except when referring to irregular or unofficial ballots and except where such word is used in connection with the casting of a vote by a voter and in such event the word "ballot" is defined as the casting of a secret vote.

The term "the numbering of tickets" is defined to mean the numbering of the votes and/or ballots as they are cast by the voters at an election.

The terms "protective numbering counter" and/or "protective counter" mean a separate counter built into the machine which can not be reset and which records the total number of movements of the operating lever.

The terms "public numbering counter" and/or "public counter" mean a device in full view of the election officials except while the voter is voting which records the number of the voter's vote and is cumulative of the number of votes cast on the machine at the election being held.

The term "watcher" is similar to supervisor in meaning but he is an official of the election in this Act. Acts 1930, 41st Leg., 4th C.S., p. 60, ch. 33; Acts 1939, 46th Leg., p. 301, § 6.

The amendatory act of 1937, 45th Leg. 2nd C.S. p. 1953, ch. 52, amended sections 3, 6, 7, 8, 9, 10, 13, 18, 20, and 24 of this article in numerous particulars.

The amendatory act of 1939, 46th Leg., p. 301, amended sections 5, 7, 8, 13, 23 and 25 of this article.

The amendatory act of 1939 also purported, in the title, to amend section 15 of this article, but the body of the act did not effect an amendment to such section 15.

Section 7 of the amendatory act of 1939 read as follows: "If any section, para-

graph, sentence, clause, phrase or word of this Act or the application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of the Act".

Section 11 of the amendatory act of 1937 and section 8 of the amendatory act of 1939 repeals all conflicting laws and parts of laws; section 12 of the 1937 Act and section 9 of the 1939 Act declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 2997b. Transportation of voting machines; counties of 300,000-355,000

In all counties in the State of Texas having a population of three hundred thousand (300,000) inhabitants or more, and less than three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding Federal Census, and where such counties have purchased and adopted voting machines for the purpose of holding any and all elections in such counties, it shall be the duty of the County Auditor upon the order of Commissioners Court to advertise for bids for the hauling and/or transporting such voting machines to the various pre-



cinets of such counties, such advertisement to be inserted in a newspaper, published and having a general circulation in such counties at least one week prior to the date of the election. All bids shall be opened at a regular or called meeting of the Commissioners Court and contract for hauling and/or transporting said voting machines to the place of voting including those precincts located both within and without the city limits of the county seat shall be let to the lowest and best bidder; provided the Commissioners Court shall reserve the right to reject any and all bids if in their judgment such bids are unsatisfactory. Acts 1939, 46th Leg., Spec.L., p. 730, § 1.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing that in all counties in the State of Texas having a population of three hundred thousand (300,000) inhabitants or more, and less than three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding Federal Census, and where such counties

have purchased and adopted voting machines for the purpose of holding elections, the County Auditor, upon order of the Commissioners Court, shall advertise for bids for the hauling and/or transporting voting machines to the various precincts in the county; providing that the Commissioners Court shall award contract to the lowest and best bidder; providing that the Commissioners Court shall reserve the right to reject any and all bids; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 730.

## CHAPTER THIRTEEN—NOMINATIONS

### 1. BY PARTIES OF ONE HUNDRED THOUSAND VOTES AND OVER

Art.

3116b. Limitation on amounts assessable against candidates for Congress in certain districts composed of single counties [New].

3116c. Counties of 43,000 to 43,100, 60,000 to 60,600 and 98,000 to 99,000 population—Candidates for State

Art.

Representative to make payments to County Executive Committee [New].

3116d. Counties of 133,391 to 150,000 and of 15,149 to 15,525 population—Payments to County Executive Committee by candidates for Representative [New].

### 1. BY PARTIES OF ONE HUNDRED THOUSAND VOTES AND OVER

Art. 3116a. Payments by candidates for State Senator or Representative

In all counties of this State having a population of more than one hundred thousand (100,000), and not in excess of two hundred and fifty thousand (250,000) inhabitants, according to the last preceding Federal Census, no person who is a candidate in a primary election of such county for nomination for State Senator or Representative in the Legislature shall have his or her name placed on such primary ballot unless and until he or she has paid to the County Executive Committee of such county a sum to be fixed by such Executive Committee not to exceed Fifty Dollars (\$50) as his or her portion of the expenses for holding such primary election; and in all counties of this State having a population of more than two hundred and fifty thousand (250,000) inhabitants, according to the last preceding Federal Census, no person who is a candidate in a primary election of such county for nomination for State Senator or Representative in the Legislature shall have his or her name placed on such primary ballot unless and until he or she has paid to the County Executive Committee of such county a sum to be fixed by such Executive Committee, not to exceed One Hundred Dollars (\$100), as his or her portion

of the expenses for holding such primary election; and such candidate shall not be required to pay any other sum, or sums, to any other person or committee to have his or her name placed on the ballot as such candidate; except that any such candidate whose district includes another county or counties of less than one hundred thousand (100,000) population, according to the last Federal Census, shall pay to the Executive Committee of such other county, or counties, as may be in such candidate's district, an additional sum of One Dollar (\$1) and no more in each of said counties to have his or her name placed on the ballot in each of such other counties.

Sec. 2. All laws, or parts of laws, in conflict herewith are hereby repealed as to those portions of such law, or laws, as are in conflict herewith. As amended Acts 1937, 45th Leg., p. 809, ch. 399.

Section 3 of the amendatory act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

**Art. 3116b. Limitation on amounts assessable against candidates for congress in certain districts composed of single counties**

From and after the passage of this Act in all counties having a population of more than three hundred twenty thousand (320,000) inhabitants, and less than three hundred fifty thousand (350,000) inhabitants, according to the last preceding and any future Federal Census, the county executive committee in estimating the cost of a primary election and run-off (if there is one) shall not assess any candidate for Congress whose district composes but one county, more than Three Hundred Fifty (\$350.00) Dollars.

From and after the passage of this Act in all counties having a population of more than two hundred ninety-two thousand (292,000) inhabitants, and less than three hundred thousand (300,000) inhabitants, according to the last preceding and any future Federal Census, the county executive committee in estimating the cost of a primary election and run-off (if there is one) shall not assess any candidate for Congress whose district composes but one county, more than Six Hundred (\$600.00) Dollars. Acts 1937, 45th Leg., p. 805, ch. 396, § 1.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act limiting the amount of money to be assessed against candidates for Congress in districts composed of one county, when the population is more than three hundred twenty thousand (320,000) inhab-

itants, and less than three hundred fifty thousand (350,000), and when the population is more than two hundred ninety-two thousand (292,000) inhabitants, and less than three hundred thousand (300,000), according to the last preceding and any future Federal Census, and declaring an emergency. Acts 1937, 45th Leg., p. 805, ch. 396.

**Art. 3116c. Counties of 43,000 to 43,100, 60,000 to 60,600 and 98,000 to 99,000 population—Candidates for State Representative to make payments to County Executive Committee**

That from and after the effective date of this Act, in all counties in this State having a population of not less than forty-three thousand (43,000) and not more than forty-three thousand, one hundred (43,100), and in all counties in this State having a population of not less than sixty thousand (60,000) and not more than sixty thousand, six hundred (60,600), and in all counties of this State having not less than ninety-eight thousand (98,000) nor more than ninety-nine thousand (99,000), according to the last preceding Federal Census, and where such counties constitute a Representative District, no person who is a candidate in a

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primary election of such counties, for nomination for State Representative, including Floterial Representative, in the Legislature, shall have his or her name placed on such primary ballot in such counties, unless and until he or she has paid to the County Executive Committee of the political party whose nomination he or she seeks, the sum of Fifty Dollars (\$50).

It being the purpose of this Act to require the payment of Fifty Dollars (\$50) as a prerequisite to having the name of the candidate placed on the official ballot in any primary election in each and all counties hereinabove set out. Acts 1939, 46th Leg., p. 309, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the Act of 1939 reads as follows: "All laws and parts of laws in conflict herewith are hereby repealed to the extent of the conflict only."

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing amount of payment to the County Executive Committee, in order to have name placed on ticket for Representative in certain counties; repealing all laws and parts of laws in conflict herewith to the extent of the conflict only; and declaring an emergency. Acts 1939, 46th Leg., p. 309.

**Art. 3116d. Counties of 133,391 to 150,000 and of 15,149 to 15,525 population—Payments to County Executive Committee by candidates for Representative**

That from and after the effective date of this Act, in all counties in this State having a population of not less than one hundred and thirty-three thousand, three hundred and ninety-one (133,391) and not more than one hundred and fifty thousand (150,000), and in all counties in this State having a population of not less than fifteen thousand, one hundred and forty-nine (15,149) and not more than fifteen thousand, five hundred and twenty-five (15,525), according to the last preceding Federal Census, no person who is a candidate in a primary election of such counties, for nomination for State Representative, shall have his or her name placed on the primary ballot to be voted on at any election unless and until he or she has paid to the County Executive Committee of the political party, whose nomination he or she seeks, the sum of One Hundred Dollars (\$100); provided, however, that where said counties are a part of a Floterial Representative District, the Floterial Representative in such counties shall not have his or her name placed on the official ballot for Floterial Representative unless and until he or she shall have paid to the Chairman of the County Executive Committee of the political party, whose nomination he or she seeks, the sum of Fifty Dollars (\$50), in each of said counties. Acts 1939, 46th Leg., p. 311, § 1.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws.

**Title of Act:**

An Act providing amount of payment to the Executive Committee in order to have the name placed on official ballot for Rep-

resentative and Floterial Representative and Floterial Representative No. 2 in certain counties; repealing all laws and parts of laws in conflict herewith to the extent of the conflict only; and declaring an emergency. Acts 1939, 46th Leg., p. 311.

**Art. 3139. 3140 State convention**

All party State conventions to announce a platform of principles and announce nominations for Governor and State offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on the Tuesday after the second Monday after the fourth Saturday in August, 1936, and every two years thereafter, and they shall remain in session from day to day until all nominations are announced and the work of the convention is finished. Said convention

shall elect a chairman and a vice-chairman of the executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the State, one of whom shall be a woman and the other a man, the members of said committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold said office until his successor is elected; and, in case of a vacancy, majority of the members of said committee shall fill the same by electing some eligible person thereto, but such person shall be of the same sex as vacating member. As amended Acts 1937, 45th Leg., p. 538, ch. 264, § 1; Acts 1939, 46th Leg., p. 308, § 1.

The amendatory act of 1939, cited to the text, added the provision for a vice chairman of the executive committee.

Section 2 of the amendatory act of 1939

repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

## CHAPTER FOURTEEN—LIMITING EXPENDITURES IN PRIMARY

Art.

3170b. Candidates for Representative in State Legislature, limiting expenses of in certain counties [New].

**Art. 3170b. Candidates for Representative in state legislature, limiting expenses of in certain counties**

Section 1. That in all counties of this State having a population of more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, each candidate for Representative in the Legislature, may expend, or cause to be expended by his campaign manager or otherwise under the provisions of Chapter 14<sup>1</sup> of Title 50, Revised Civil Statutes of Texas, 1925, not to exceed Seven Hundred and Fifty Dollars (\$750), or the equivalent thereof in value, for campaign expenses in the primary campaigns for nomination to such office; of which sum, not more than Six Hundred Dollars (\$600) may be expended in the first primary. Other than the increase in the amount of expenditures of such campaign expenses provided for, and permitted under the provisions of this Act, all other provisions of Chapter 14, Title 50, of the Revised Civil Statutes of Texas of 1925, shall remain unaffected by this Act; and all other provisions of said Chapter 14, other than as to the amount of expenditures permitted, shall remain in full force and effect.

### Provisions cumulative; repeal

Sec. 2. The provisions of this law shall be cumulative of all General Laws on the subject not in actual conflict herewith, and all laws and parts of laws in conflict herewith are repealed only in so far as such laws are in actual conflict with the provisions of this Act in their application, and in case of such conflict the provisions of this Act shall control and be effective. Acts 1937, 45th Leg., p. 810, ch. 400.

<sup>1</sup> Articles 3168-3173.

Title of Act:

An Act fixing and limiting expenses of candidates for Representative in the State Legislature in primary elections in counties of more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census; subject to all

other provisions of Chapter 14, Title 50, of the Revised Civil Statutes of Texas of 1925; and repealing all laws in conflict with the provisions of this Act, but not otherwise; making the Act cumulative of all General Laws. Acts 1937, 45th Leg., p. 810, ch. 400.

## TITLE 51—ELEEMOSYNARY INSTITUTIONS

## CHAPTER TWO—STATE HOSPITALS

Art. 3185a.	State Hospital established west of one hundredth meridian [New].	Art. 3196a.	Classes of patients admitted [New].	apprehension and commitment [New].
3193a—1.	Temporary commitment by county court without jury trial;			

Art. 3185a. State Hospital established west of one hundredth meridian

That there shall be constructed, established, and maintained a hospital for the care, treatment, and support of mentally ill persons of this State. It shall be known as the State Hospital; that after the said hospital has been located then the name of the town near which it is located shall be added to the name so as to thereafter read \_\_\_\_\_ State Hospital. The hospital shall be located at some point west of the one hundredth meridian, or within any county through which the one hundredth meridian passes, and any place where not less than three hundred (300) acres of good fertile agricultural land can be secured by donation to the State of Texas.

The Board of Control of the State of Texas shall select a site for said hospital, and the Board, in selecting such site, shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants, the supply of water, building material, fuel, fertility of soil, and healthfulness, and the same shall contain not less than three hundred (300) acres of land as above described. Said Board shall take title to the land so selected by them in the name of the State of Texas for the use and benefit of said hospital; provided, however, that the Attorney General's Department shall first approve the title to the said land so selected by the said Board.

At the completion of the buildings, and when the said hospital is ready to open, the Board of Control shall appoint a Superintendent and other employees to superintend and carry on the work of such hospital as is now provided by the General Laws of the State of Texas governing such institutions.

The support and general maintenance of said hospital shall be the same in every respect as is provided for insane hospitals as now provided by law.

There shall be constructed upon said grounds so selected permanent, suitable, substantial, and fireproof buildings sufficient to accommodate at least five hundred and forty (540) inmates; said buildings to be provided with modern improvements for furnishing water, heat, ventilation, and sewerage; and the Board of Control immediately after this Act goes into effect and after the selection of the site for said hospital, and after the title of said land shall have been approved by the Attorney General, shall advertise for plans and specifications for said buildings and contract for the erection of the same; and shall have the power and authority to do and perform all things necessary for carrying out the purpose of this Act. Provided that all buildings authorized by this Act, and for which an appropriation is hereby made, shall be of fireproof construction, and that the part of all plans and specifications for the erection of said buildings relating to fire protection shall be subject to the approval of the State Fire Insurance Commission.

That there shall be and there is hereby appropriated out of the General Revenues of this State not otherwise appropriated the sum of Eight Hundred and Seventeen Thousand Dollars (\$817,000) for the buildings and improvements and the expenses incurred in securing the lands for

the site, providing that no money herein appropriated shall be expended for the payment of the lands selected for the site.

The total appropriation as heretofore set out shall be allocated as follows:

Item 1 Ward building and equipment.....	\$115,000.00
Item 2 Ward building and equipment.....	115,000.00
Item 3 Psychopathic building and equipment.....	127,000.00
Item 4 General hospital-clinic building and equipment..	75,000.00
Item 5 Administration building and equipment.....	100,000.00
Item 6 Employees' quarters and equipment.....	60,000.00
Item 7 Storeroom-warehouse and equipment.....	40,000.00
Item 8 Utility and other buildings, utility and other equipment, roads, sidewalks, furniture, live- stock, implements, and contingencies.....	185,000.00

Grand total, proposed new hospital.....\$817,000.00

In the expenditure of the above itemized amounts, the Board of Control shall have the authority to make proper adjustments in the above set forth items. Acts 1937, 45th Leg., p. 793, ch. 388, § 1.

Sections 2 and 3 of Acts 1937, 45th Leg. p. 793, ch. 388, which were similar to section 1 of the act except that they appropriated the sum of \$817,000.00 for establishment of a state hospital east of the 96th meridian, were vetoed by the governor. The veto message read as follows:

"Approved and signed (May 21, 1937) as to the appropriation item and authority contained in Section 1 of \$817,000 for the establishment of a hospital west of the 100th Meridian; disapproved and vetoed as to the appropriation item and authority of \$817,000.00 for the establishment of a hospital east of the 96th Meridian as per appended statement, copy of which is being transmitted to the Legislature this 21st day of May, A. D. 1937.

(Signed) James V. Allred  
Governor of the State of Texas."

Appended statement by Governor referred to above read as follows: "Veto of that portion of H.B. 397 contained in Sections 2 and 3 carrying an appropriation and authority for the buildings and improvements and expenses incurred in securing the land for the site of a hospital to be located east of the 96th Meridian; the second appropriation item in said bill."

Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to provide for the purchase of sites and for the establishment, location and construction of hospitals for the mentally ill, naming the same, and providing for the care, treatment, and support of mentally ill persons; to make appropriation therefor; and declaring an emergency. Acts 1937, 45th Leg., p. 793, ch. 388.

**Art. 3188. Divide into districts**

The Board of Control shall divide the State into hospital districts, may change the districts from time to time, and shall designate the State hospitals to which insane, epileptic and feeble-minded persons from each district shall be admitted and may transfer patients from one institution to another. All such persons within any such districts committed, shall be committed to the State hospital designated for that district, or to the United States Veterans' Administration or such other agency or department of the United States as will accept such insane person for care or treatment. The said State Board of Control shall also have authority to transfer any legally committed patient from a State hospital to the United States Veterans' Administration or any other agency or department of the United States as will accept such person of unsound mind for care or treatment, and in case such transfer is or shall be made, the commitment and transfer order shall constitute legal authority for the restraint of such patient by the United States Veterans' Administration or such other agency or department of the United States until the Court by which such patient was adjudged insane and committed shall order

such patient released. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2025, ch. 485, § 1.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Art. 3189. Repealed by Acts 1937, 45th Leg., p. 293, ch. 152, § 6

Art. 3193o—1. Temporary commitment by county court without jury trial; apprehension and commitment

Section 1. (a) If information in writing and under oath be given to any County Judge that any person in his county who is not charged with a criminal offense, is believed to be mentally ill, and that the welfare of himself and/or others requires that he be placed in a State hospital for the mentally ill for not exceeding ninety (90) days for observation and/or treatment, and such County Judge shall believe such information to be true, he shall forthwith, in termtime or vacation, fix a day and place for the hearing and determining of the matter, which place shall be either in the Courthouse of the county, or at the residence of the person named, or at any other place in the county, as the County Judge may deem best for such person and shall give notice to such person of the time and place of such hearing. If, upon the hearing of such matter, two (2) reputable physicians authorized by law to practice medicine in the State of Texas, neither of whom is on the staff of any Texas State Hospital, and each of whom has examined the person alleged to be mentally ill within the preceding five (5) days of said hearing, shall swear that in each of their professional opinions such person is mentally ill, is neither feeble-minded, an idiot, an imbecile, nor an epileptic, and that in his opinion such person should be temporarily committed for observation and/or treatment to some State hospital authorized by law to care for and treat mentally ill persons, and if thereupon the County Court finds that such person should be temporarily committed to a State hospital for observation and/or treatment, he shall so state in his order of commitment which shall be entered upon the minutes of said Court and a writ of commitment issued thereupon committing said person temporarily for observation and/or treatment to some State hospital authorized by law to care for and treat mentally ill persons. Said order of the County Court shall in no event be of any further force or effect from and after ninety (90) days from the date thereof. The Court's order shall fix the temporary commitment period at a term which shall not exceed ninety (90) days. A sworn statement of the evidence of said two (2) physicians shall be filed in said matter, and a duly certified copy thereof and the Court's order committing such person and the financial-property statement hereinafter provided for shall be forwarded immediately to the State Board of Control, and said certified copies shall be any hospital superintendent's sufficient authority to admit and hold said person in said hospital for observation and/or treatment for not exceeding ninety (90) days. Said person, while a patient of any State hospital, shall be subject to the General Laws and the rules and regulations governing said hospital. The Board of Control, upon advice of the Attorney General, shall prepare the legal forms needed hereunder and shall furnish the counties copies thereof to be used in the preparation and printing of such legal forms. No superintendent of a State hospital shall admit such person, unless and until the commitment order and papers are prepared and so filed on the approved forms.

(b) Such person may also be committed temporarily for not exceeding ninety (90) days, as hereinbefore provided, to United States Veterans' Administration Facilities and other United States Government-operated hospitals, or any other agency or department of the United States Government required or authorized by Federal Law to furnish care and treatment to such person in those cases where such agency or department of the United States Government will accept such person.

#### **Release of temporarily committed patients**

Sec. 2. A person who has been temporarily committed by the County Court to a State hospital for observation and/or treatment, may be released, discharged, or furloughed by the hospital superintendent at any time during the commitment period. Said patient shall be automatically discharged on the expiration date fixed in the Court's order and the hospital superintendent shall thereupon immediately release such patient, and any discharge from said superintendent of said patient shall operate to fully set aside in all respects said order of commitment by the County Court.

#### **Expenses of temporarily committed patients**

Sec. 3. The county shall provide transportation to and from the State hospital for such person temporarily committed to such hospital by the County Court, but the county shall be reimbursed for such expenses if the patient or relatives are financially able to pay such expenses. The county committing such person to a State hospital, acting through its County Court, shall provide all transportation expenses of returning the patient from the State hospital to the committing county within five (5) days after the hospital superintendent shall have mailed a notice by registered mail to the committing County Judge that the patient is to be released, discharged, or furloughed. Said hospital charges for the maintenance and treatment of such patient shall be paid by such patient or such patient's relatives, if they are financially able to pay, in such amounts and at such times as may be required by the State Board of Control in accordance with the laws now in force or hereinafter enacted relating to such charges of persons committed to State hospitals by jury trial. The committing county shall be liable to the State for the board and treatment of the person for all the time he remains in the State hospital after the expiration of the five-day period after notice shall have been mailed to the County Judge of said county as hereinbefore provided. The County Judge shall furnish to the State Board of Control a financial and property statement or certificate concerning the property of said person, or the property of such person's relatives who may be liable for such person's support.

#### **Who are liable**

Sec. 4. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

- Of the husband or wife of such person, if able to do so;
- Of the father or mother of such person, if able to do so.

#### **Property rights of temporarily committed persons**

Sec. 5. The commitment of a person under this Act shall not affect his property rights nor his legal capacity.

#### **Transfer of patients from other states to Texas**

Sec. 6. The State Board of Control, upon the written application of the County Judge of a person's resident county, is authorized to accept



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for observation and/or treatment in any State hospital for the mentally ill, any resident citizen of Texas who may be committed to a hospital for the treatment of the mentally ill in any other State, and the county of his residence shall be, for all purposes, considered the committing county.

#### Partial invalidity

Sec. 7. In the event any section, subdivision, paragraph, or sentence of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding the invalid portions. Acts 1937, 45th Leg., p. 542, ch. 268.

Section 8 of this Act declared an emergency making the Act effective on and after its passage.

#### Title of Act:

An Act providing that County Courts upon information and notice, without the necessity of a trial by jury in term time or vacation, may temporarily commit persons alleged to be mentally ill who are not charged with a criminal offense to State hospitals for the mentally ill for not exceeding ninety (90) days for observation and/or treatment; providing temporary commitment may also be made to United States Veterans' Administration Facilities and other United States Government-operated hospitals in those cases where such agency or department of the United States will accept such persons; providing a

method of determining who may be committed hereunder; providing for the temporary commitment of such persons, their discharge, furlough, and release; providing for the payment of their transportation, support, maintenance, and treatment charges and who are liable therefor; providing that the commitment of a person shall not in any way affect the property rights nor the legal capacity of the person so committed; providing for the transfer of residents of this State committed to hospitals for the mentally ill in other States to the hospitals for the mentally ill in this State; providing that if any portion of this Act is declared unconstitutional and invalid it shall not affect the remaining parts; and declaring an emergency. Acts 1937, 45th Leg., p. 542, ch. 268.

### Art. 3196a. Classes of patients admitted

Section 1. Patients admitted to State hospitals and State psychopathic hospitals shall be of two classes, to wit:

Indigent patients;

Non-indigent patients;

Indigent patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

Non-indigent patients are those who possess some property out of which the State may be reimbursed, or who have someone legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the first instance, but in such cases the State shall have the right to be reimbursed for the support, maintenance, and treatment of such patients.

#### Persons chargeable with expenses of patients

Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so.

#### Investigations to determine means of support

Sec. 3. The State Board of Control is authorized to demand and conduct investigations in the County Court to determine whether or not a patient is possessed of or entitled to property and/or whether or not some other person is legally liable for his support, maintenance, and

treatment and to pay therefor, and to have citation issued and witnesses summoned to be heard on said investigation.

#### Contracts fixing support

Sec. 4. The State Board of Control, directly or through an authorized agent or agents, may make contracts fixing the price for the support, maintenance, and treatment of patients in any State hospital or psychopathic hospital at a sum not to exceed the cost of same or for such part thereof as such respective patient, his relatives or guardian of his estate may be able to and agree to pay, and binding the persons making such contracts to payment thereunder.

#### State representative in filing claims in probate court

Sec. 5. Upon the written request of the State Board of Control the County or District Attorney, or in case of the refusal or inability of both to act, the Attorney General, shall represent the State in filing a claim in Probate Court or a petition in a Court of competent jurisdiction, wherein the guardian of such patient and/or other person legally liable for his support, may be cited to appear then and there to show cause why the State should not have judgment against him or them for the amount due it for the support, maintenance, and treatment of such patient; and, upon sufficient showing, judgment may be entered against such guardian or other persons for the amount found to be due the State, which judgment may be enforced as in other cases. A verified account, sworn to by the superintendent of the respective hospitals or psychopathic hospitals wherein such patient is being treated, or has been treated, as to the amount due shall be sufficient evidence to authorize the Court to render judgment therein. The County or District Attorney representing the State shall be entitled to a commission of ten (10) per cent, of the amount collected. All moneys so collected, less such commission, shall be, by the said attorney, paid to the State Board of Control, which shall receive and receipt for the same and shall use the same for the maintenance and improvement of said institution or institutions in which said patient shall have been confined.

#### Repeals

Sec. 6. That Section 4, Chapter 174, Acts, Regular Session of the Thirty-ninth Legislature, being Article 3189, Revised Civil Statutes of Texas of 1925, and all laws and parts of laws in conflict with this Act, be and they are hereby expressly repealed. There is however, specifically reserved and preserved to the State any and all rights and causes of action that accrued or arose under and by virtue of said Section 4, Chapter 174, Acts, Regular Session, Thirty-ninth Legislature, being Article 3189, Revised Civil Statutes of Texas of 1925, or any other laws repealed by this Act.

#### Partial invalidity

Sec. 7. If any section, sentence, clause, or part of this Act shall, for any reason, be held to be invalid, such decision or holding shall not affect the remaining portions of this Act, and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause, or part thereof irrespective of the fact that any other sentence, section, clause, or part thereof may be declared invalid. Acts 1937, 45th Leg., p. 293, ch. 152.

Section 8 of this Act declared an emergency making the act effective on and after its passage.

#### Title of Act:

An Act defining indigent and non-indigent patients in State and psychopathic

hospitals; providing for their support and that the State be reimbursed for the support, maintenance, and treatment of non-indigent patients; declaring who are liable for the support, maintenance, and treatment of non-indigent patients; providing that the State Board of Control

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may demand and conduct investigations in the County Court to determine the ability of patients or those liable for their support to pay therefor; authorizing contracts for the support, maintenance, and treatment of patients in State and psychopathic hospitals; and providing that suits may be instituted to collect for the support, maintenance, and treatment of patients, and that the County and District Attorneys shall represent the State in

such suits and prescribing the fee for so doing; repealing Section 4, Chapter 174, Acts, Regular Session, Thirty-ninth Legislature, being Article 3189, Revised Civil Statutes of Texas of 1925; repealing all laws in conflict herewith; reserving all rights and causes of action that arose under said Acts so repealed; providing a saving clause, and declaring an emergency. Acts 1937, 45th Leg., p. 293, ch. 152.

### CHAPTER THREE—OTHER INSTITUTIONS

<p>SOLDIERS' AND SAILORS' HOME</p> <p>Art. 3220—1. Creation of Soldiers' and Sailors' Home; persons eligible; regulations [New].</p> <p>DEAF, DUMB AND BLIND ASYLUM FOR COLORED YOUTHS</p> <p>3221a. Orphan negro children to be accepted in Home at Austin; re-</p>	<p>Art.</p> <p>removal of orphan negro children from Dickson Colored Orphanage [New].</p> <p>WACO STATE HOME</p> <p>3255a. Name of home changed [New].</p> <p>NAVARRO COMMUNITY FOUNDATION</p> <p>3263b. Foundation established; powers and duties [New].</p>
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#### TEXAS SCHOOL FOR THE BLIND

##### Art. 3207a. State Commission for the Blind; powers and duties

Section 1. There is hereby created and established the State Commission for the Blind, consisting of three (3) members to be appointed by the Governor and confirmed by the Senate of Texas. One (1) to be a graduate of the Texas School for the Blind and the other two (2) to be outstanding citizens of Texas, and whose terms of office shall be for six (6) years each, or until their successors shall have been appointed and qualified; provided, however, that the Governor shall name the Chairman thereof; and provided, that of the first members appointed hereunder, one (1) shall serve for a term of two (2) years, one (1) for four (4) years, one (1) for six (6) years from January 1, 1939, and thereafter each shall be appointed for a term of six (6) years. No paid employee of any agency carrying on work for the blind shall be eligible for appointment. Members of the Commission for the Blind shall serve without compensation but shall receive their necessary traveling and other expenses actually incurred in the performance of their duties. The Commission for the Blind shall annually elect a Secretary and such other employees as may be authorized by the general or special appropriation for said Commission. As amended Acts 1939, 46th Leg., p. 313, § 1.

Section 2 of amendatory Act of 1939 the Act should take effect from and after declared an emergency and provided that its passage.

#### SOLDIERS' AND SAILORS' HOME

##### Art. 3220—1. Creation of Soldiers' and Sailors' Home; persons eligible; regulations

Section 1. That there be and is hereby created and established a Soldiers' and Sailors' Home in the State of Texas; said Home shall be operated in conjunction with and as a part of the Confederate Home at Austin, Texas; said Home to be under the control and regulation of the State Board of Control and said Board shall be governed in the regu-

lation of the affairs of said Home by laws relative to the affairs of the Confederate Home, Deaf, and Blind Institutes of the State of Texas so far as same may be applicable and shall be authorized to make such other regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce compliance with said rules and regulations by discharging from the Home as in its judgment shall be necessary, any inmate who may violate said rules and regulations. Said Board shall make such examination from time to time as it may deem necessary, as to the qualification and record as a soldier and sailor in the United States Army of any inmate, and discharge at once any inmate who procured admission to the home by fraud or misrepresentations.

Sec. 2. All honorably discharged ex-service men who served in the armed forces of the United States in the Spanish American War or the World War and have been residents of this State for five years immediately preceding the date of application for admission to the Home, unless the service of applicant is accredited to the State of Texas, and who are disabled by disease, wound or otherwise and by reason of such inability are unable to earn their living, shall be entitled to be admitted to said Home subject to the rules and regulations adopted by the Board of Control shall govern the admission of applicants. The fact that an ex-service man receives a pension or other compensation from the United States Government, shall not be considered in establishing such person's eligibility for admission to said home. Whenever it shall be deemed necessary by the Board of Control, any ex-service man receiving a pension or compensation from the United States Government residing in said home and accepting the benefits shall deposit with the Superintendent of the Home his pension money or compensation or so much thereof as said Board of Control shall determine upon receipt of his pension or compensation check. In cases where any such occupant has a wife, child or parent dependent upon him, such pension or compensation money in excess of his prorated part required for his maintenance shall be sent to such dependent person, and in other cases, the same shall be kept on deposit for such occupant, subject to the direction of the Board of Control, and all unexpended money shall be paid to the depositor in his final discharge from the home or to his heirs or legal representatives upon his decease. The provision herein concerning admission to the Home shall apply at all times to residents to be entitled to remain in said home.

Sec. 3. When any ex-service man is a resident or becomes a resident in the Soldiers' and Sailors' Home, the wife of such ex-service man shall be admitted as a resident of said Home provided she is more than forty-five years of age, subject to the rules and regulations of said Home governing the admission of applicants, provided said wife, if she be the wife of an ex-service man of the Spanish American War or the World War, was married to such ex-service man at least ten years preceding the date of making application for admission and provided further said wife has no adequate means of support and by reason of physical disability is unable to earn the same.

Sec. 4. Every inmate residing in said Home and accepting the benefits and whose wife also resides therein and receives its benefits, shall deposit with the Superintendent of said Home any pension or compensation or other benefits in money which he may receive from the United States Government and said sum or so much thereof as may be necessary, shall be used, under the direction and supervision of said Superintendent, for the purpose of clothing said wife.

Sec. 5. Provided the Confederate Soldiers or their widows now in the Home or who shall occupy said Home hereafter shall never be discriminated against nor disturbed in any way.

Sec. 6. Upon the death of any ex-service man, who is or may be a resident of said Home, the widow of said ex-service man shall be transferred to and received in the Confederate Womans' Home at Austin, Texas, if she so desires; or if she desires, she may thereafter during her natural life remain in said Soldiers' and Sailors' Home, subject to the rules and regulations of said Home.

Sec. 7. The said Board of Control is empowered and authorized to receive for and on behalf of the State any donations of money, personal property or real estate, offered for the purpose of aiding in the establishment of such Home and the future maintenance and comfort of disabled and indigent soldiers and sailors.

Sec. 8. Said Soldiers' and Sailors' Home shall be under the supervision of the Superintendent of the Confederate Home, subject to such rules and regulations as may be determined by the State Board of Control and not inconsistent with the General Laws.

Sec. 9. The Board of Control is hereby authorized to enter into negotiations and make any agreements with the United States Government for assistance in the support and maintenance of said Soldiers' and Sailors' Home.

Sec. 10. All laws and parts of Laws, General and Special, in conflict with this Act are hereby repealed, and in the event any provision of this Act is unconstitutional or invalid, the remainder of this Act shall, nevertheless, remain in effect.

Sec. 11. Wherever practical, the Board of Control shall employ ex-service men, their widows or dependents, in the operation of said Soldiers' and Sailors' Home.

Sec. 11a. Nothing in this Act is intended or shall ever be intended to bind or obligate the State of Texas for any financial assistance in carrying out the provisions of this Act nor shall any appropriation ever be made out of the general fund or any special fund of this State for the support or maintenance of the Soldiers' and Sailors' Home as authorized herein. It being the intention of the Legislature to permit the use of said Home as provided for herein but not assuming any expense directly or indirectly of any kind or character in connection therewith. Acts 1939, 46th Leg., p. 314.

Section 12 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to create a Soldiers' and Sailors' Home in the State of Texas, providing that said home shall be operated in conjunction with the Confederate Home at Austin, Texas, and placing the operation thereof under the supervision of the State Board of Control; providing that inmates may be discharged for admission procured by fraud or misrepresentation and determining eligibility for admission; providing for deposit of pensions or other compensation received from the United States Government with Superintendent and determining expenditure thereof, and providing that wife of ex-service man may be admitted to residence, and where wife of ex-service man is admitted, then such pension or compensation received shall be

deposited with Superintendent under rules and regulations promulgated by the State Board of Control for expenditure for her benefit, and providing further for the care and maintenance of inmates, and in the event of death of ex-service man, his widow may be transferred to Confederate Womans' Home at Austin, Texas, if she so desires or may remain in said Soldiers' and Sailors' Home, and providing that the Board of Control is authorized to receive donations in aid of such home, and that Superintendent of Confederate Home shall also act as Superintendent of Soldiers' and Sailors' Home, and providing that wherever practical, ex-service men, their wives or dependents, shall be employed in the operation of said Home; providing the Confederate soldiers or their widows now in the Home or who shall occupy said Home hereafter shall never be discriminated against nor disturbed in any way; and providing that nothing in

this Act is intended or shall ever be intended to bind or obligate the State of Texas for any financial assistance in carrying out the provisions of this Act nor shall any appropriation ever be made out of the general fund or any special fund of this State for the support or maintenance of the Soldiers' and Sailors' Home as authorized herein; it being the inten-

tion of the Legislature to permit the use of said Home as provided for herein but not assuming any expense directly or indirectly of any kind or character in connection therewith; and providing that Board of Control may negotiate with the Federal Government for aid and assistance in support thereof, and declaring an emergency. Acts 1939, 46th Leg., p. 314.

## DEAF, DUMB AND BLIND ASYLUM FOR COLORED YOUTHS

### Art. 3221. 210 Powers and duties of Board of Control

Section 2 of this article was repealed by Acts 1937, 45th Leg., p. 313, ch. 162, § 3.

However, the 45th Leg., by ch. 434, p. 879, § 1, repealed p. 313, ch. 162.

### Art. 3221a. Orphan negro children to be accepted in Home at Austin; removal of orphan negro children from Dickson Colored Orphanage

Sec. 2. The State Board of Control is hereby authorized to accept and care for, support and maintain, orphan Negro children in the Deaf, Dumb, and Blind Asylum for Colored Youths and Colored Orphans, located at Austin, Texas. Said Board shall have authority to move any and all orphan Negro children from the Dickson Colored Orphanage located near Gilmer, Texas, to Austin, and place them in said asylum, and care for, support, and maintain them, in said institution whenever they deem it advisable to do so; and until such time said Board shall be authorized to use the land and other property at Gilmer, Texas, now occupied and used by said Dickson Colored Orphanage for such purpose, and shall have all powers and authority herein conferred to control the property of said orphanage at such place, and use it for such purposes until such time as suitable provisions shall be made for caring for said orphans at the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas.

#### Dickson Colored Orphanage to be sold

Sec. 3. As soon as all the Negro children are removed from said Dickson Colored Orphanage by the Board of Control as provided for in this Act, the said Board shall be authorized, and it is hereby made its duty, to sell the said Dickson Colored Orphanage property for the best price that can be obtained therefor; said sale to be either for cash or on a credit as said Board may determine to be for the best interest of the State. The title to said real property shall be conveyed to the purchaser by deed duly executed by the members of the Board of Control, and the title to the personal property shall be passed to the purchaser by bill of sale, duly executed by said members. The proceeds from the sale of said property when collected shall be used by the said Board of Control for the purchase of additional land, the erection of additional buildings, or the support and maintenance for the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas, as said Board may determine to be for the best interest of said institution. Acts 1937, 45th Leg., p. 879, ch. 434.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Acts 1937, 45th Leg., p. 313, ch. 162, entitled "An Act declaring the purpose of the Legislature in enacting this Act; creating

the Texas Home for Colored Orphans and providing for the maintenance of such Home at or near Gilmer, Texas, in the County of Upshur, upon a site or tract of land heretofore donated by the Dickson Colored Orphans, Incorporated, to and ac-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

cepted by the State of Texas; repealing Sections 2 and 7 of Chapter 21, Acts of the Forty-first Legislature, Third Called Session, and all other laws and parts of laws in so far as they conflict with the provisions of this Act or its purpose to con-

tinue the maintenance of a negro orphans' home upon that tract of land donated to the State of Texas located in Gilmer, Upshur County, Texas; and declaring an emergency," was repealed by Acts 1937, 45th Leg., p. 879, ch. 434, § 1.

## WACO STATE HOME

### Art. 3255a. Name of home changed

That the name of the State Home for Dependent and Neglected Children which is located at Waco, Texas, be and the same is hereby changed and shall hereafter be known and designated as Waco State Home. Acts 1937, 45th Leg., p. 775, ch. 375, § 1.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Home for Dependent and Neglected Children to be hereafter known as Waco State Home, and declaring an emergency. Acts 1937, 45th Leg., p. 775, ch. 375.

Title of Act:

An Act changing the name of The State

### Art. 3258. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6

### Art. 3259. Placing child in children's boarding home—Dismissal of child

Sec. 1. Children committed to the Waco State Home may be placed by the superintendent, upon the approval of the State Board of Control and under the authority of an order to that effect issued by the court which committed such child to such institution, in children's boarding homes at a reasonable rate not to exceed One Dollar (\$1) per day for each child so boarded when in the judgment of such superintendent effective administration of said Waco State Home so requires; provided that such children's boarding homes shall obtain an annual license as required by law, which license shall be issued without fee, and under such reasonable and uniform rules and regulations as said Board may prescribe for all children's boarding homes in accordance with the laws of this State as same now exist or may hereafter be enacted. No child shall be placed in such children's boarding home unless it is deemed advantageous to the welfare of such child; and children so placed shall be deemed to have the same status as other inmates of said Waco State Home and shall continue to be wards and subject to the guardianship of said superintendent. Children shall be given preference who, in the judgment of the superintendent, are eligible upon the basis of their respective individual problems and individual needs, and who will profit most by such placement, and whose placement will make for more effective administration of the Waco State Home's program; provided, however, that no more than ten (10) such children from all inmates of said Waco State Home shall, at any given time, be so boarded. The superintendent of said Waco State Home shall, upon the approval of said Board, replace or remove such child from such licensed boarding homes when in his discretion he deems it advisable; or upon complaint of such child, the superintendent shall remove the child from such children's boarding home; provided that nothing herein shall abridge the visitorial and regulatory powers of the superintendent over the person of any such child so placed in such children's boarding homes, until such child has been dismissed from said Waco State Home, and then under such provisions and limitations as hereinafter stated.

Sec. 2. No child shall be dismissed from the Waco State Home until some suitable home has been found for it, or it has become self-supporting and only then upon the written recommendations of the superintendent to the Board, or when any ward committed to said Home has become married with the consent of the Board and superintendent. Children may be placed for adoption only in homes approved by the Division of Child Welfare, State Board of Control. Upon the adoption or marriage of any such child, the visitorial and regulatory powers of said Board and superintendent shall terminate. Any child not adopted who goes out from this Home either under the custody of some adult or as self-supporting shall continue under the supervision and guidance of the Board. The Board or its representative shall visit the place where said child is living or employed, and it shall be the duty of the person having the custody of said child to answer all questions asked by such Board or representative concerning the conduct, employment, treatment, or condition of said child. If in the judgment of the Board it should be for the best interest of said child that it be returned to said Waco State Home, the Board is hereby empowered to have it returned. Acts 1919, p. 301; Acts 1939, 46th Leg., p. 429, § 1.

Section 2 of the amendatory Act of 1939 the act should take effect from and after declared an emergency and provided that its passage.

## NAVARRO COMMUNITY FOUNDATION

### Art. 3263b. Foundation established; powers and duties

Section 1. That a perpetual, public charitable, nonprofit Body Corporate, for the purpose of promoting the well-being of mankind, as hereinafter defined, be, and the same is hereby, created and established with its domicile at Corsicana, Navarro County, Texas, to be denominated Navarro Community Foundation.

#### Managing trustees

Sec. 2. Be it further enacted that there shall be not less than five (5) nor more than thirteen (13) Managing Trustees of said Navarro Community Foundation, and a majority of the whole number of Managing Trustees holding office at any time shall constitute a quorum for the transaction of all business, except in those matters where this Act shall require the concurrence of a larger number of such Trustees.

#### Trustees named

Sec. 3. Be it further enacted that the following persons, having been heretofore duly chosen as Managing Trustees of and for said Navarro Community Foundation, heretofore and presently an unincorporated, public charitable, nonprofit trust, be, and they are hereby, constituted Trustees of said Navarro Community Foundation, as hereby created and established, namely: B. Lynn Davis, Charles Lee Jester, Arthur G. Elliott, Eugene W. Robinson, R. Lee Hamilton, Earl H. Newton, Sydney Marks, R. Lloyd Wheelock, J. Odie Burke, Ralph W. Stell, Ben F. Blackmon, Will T. McKee and Thomas L. Tysen.

#### Trustees as body politic and corporate

Sec. 4. Be it further enacted that the Trustees aforesaid be, and they are hereby, constituted a Body Politic and Corporate in deed and in law by the name of Navarro Community Foundation, and by that name, they and their successors shall and may have succession, and be able and capable in law to have and to receive and to enjoy to them and their successors any and all property, real, personal, and mixed, of any



kind whatsoever which may be given, granted, or bequeathed to them, or acquired by them in any lawful manner whatsoever and they shall in said name and for the purposes hereinafter defined have, hold, and enjoy all the properties conveyed to them in trust by the late Frank Neal Drane, by instruments of conveyance dated May 28, A. D. 1938, and partitioned and set apart to them, in severalty, by judgment of the District Court of Navarro County, Texas, rendered on December 21, A. D. 1938, in Cause No. 20,031, appearing in the Civil Minutes of said Court in Vol. 37, Pages 173, et seq., for the aid and benefit of any one or more or all of the purposes of said Navarro Community Foundation, as defined in the next succeeding section hereof.

#### Purpose of Foundation

Sec. 5. Be it further enacted that Navarro Community Foundation is created and established for the exclusive purpose of promoting the well-being of mankind primarily in Navarro County, Texas, but upon unanimous vote of its Managing Trustees, elsewhere in the State of Texas, by devoting and applying the corpus and net income, either or both, of its properties to and for the use and benefit of any one or more or all of the following public charities, namely:

(1) The promotion and extension of religion; (2) the promotion of education; (3) the alleviation of human suffering and the prevention and control of disease; (4) the acquisition, construction, maintenance, and beautification of public buildings, grounds, and/or works for the encouragement of public civic betterment; (5) the relief of worthy poor and indigent by and through agencies and institutions legally organized and operated exclusively for such charitable purposes; (6) the aid of any scientific endeavor or cause, designed and carried on solely to contribute to the betterment of mankind.

#### Managing trustees, continued

Sec. 6. Be it further enacted that:

(a) The management of said Navarro Community Foundation and the possession of all its funds and properties shall be vested in the Board of Managing Trustees herein created and their successors. Said Board of Managing Trustees shall always consist of not less than five (5) nor more than thirteen (13) members. It shall be a self-perpetuating board, vacancies in the membership whereof may be filled by two-thirds affirmative vote of the remaining members. Such Board may from time to time, by two-thirds affirmative vote, determine the number of Managing Trustees within the limitation herein fixed and elect its personnel. Members of the Board of Managing Trustees may be elected to serve in overlapping groups for three-year terms. All Managing Trustees shall be resident citizens of Navarro County, Texas, except that by their unanimous vote, as many as two may reside elsewhere in the State of Texas.

(b) If ever the Board of Managing Trustees shall fall below five (5) members, and the continuing members fail for two successive regular quarterly periods to fill such vacancy or vacancies, in the manner provided herein, then such shall be done by appointment of a Judge of the District Court of Navarro County, Texas, or other Court then having the jurisdiction now held by that Court, upon petition of any one or more of the remaining Managing Trustees, or any donor to the Foundation, or any other person having personal or official interest in or connection with it, or the Attorney General of the State of Texas, and such Managing Trustee or Trustees so appointed, and their successors, shall have all the powers and perform all the duties of the original Managing Trustees.

(c) By a two-thirds affirmative vote of all the Managing Trustees, at any meeting duly assembled, any such Trustee not acceptable to the Board and in its judgment deemed unsuitable as a member, may have his office declared vacant and shall be excluded from the Board, which vacancy shall be filled by the remaining members of the Board, in the manner as herein provided.

(d) A Managing Trustee desiring to resign as such shall submit a written resignation to the remaining Trustees for their action thereon, and upon two-thirds affirmative vote of all the remaining Trustees, such resignation may be accepted and the remaining members of the Board may elect his successor.

(e) In recognition of meritorious services to the Foundation by a retiring Managing Trustee, the Board, by unanimous vote, may name him or her an Emeritus Trustee.

(f) The Managing Trustees shall meet at least quarterly each year, in the months of January, April, July, and October; they shall, at the January meeting of each year, determine the number of such Trustees to be elected for the current year, and elect the proper number of such Trustees.

(g) The Managing Trustees, and their successors, shall have all of the powers of ownership in respect to the funds and properties of the Foundation, including the rights of acquisition and disposition thereof; they may, by two-thirds affirmative vote, within their judgment and discretion, in the furtherance of the plans and purposes of the Foundation, pass title to and possession of any of the Foundation's funds and properties by devoting and applying the same to and for the use and benefit of any one or more or all of the public charitable purposes herein expressed, and they may, as to such funds and properties, terminate the trust, vesting in the donee or donees the full title to and possession thereof.

(h) Managing Trustees are hereby authorized, but not required, to continue to hold and retain any and all of the properties coming into their hands, in the same form of investment in which such property existed at the time of its delivery to them, and they shall not be liable for any loss or decrease in value of the property so retained; they are hereby authorized, in their discretion, to sell and exchange properties, and acquire other properties and moneys therefor, and hold, invest and reinvest the corpus from time to time held in trust hereunder, in such manner and in such property as they may deem advisable, and shall not be restricted to investments in what are commonly known as "legals"; they may lend money for the Foundation, and may borrow money for its benefit, upon its faith and credit, and/or pledge its assets and securities therefor; they may mortgage, pledge, sell, improve, exchange, or lease any real property held in trust hereunder—all for such consideration and upon such terms and conditions as may to them seem advisable; they may collect and receipt for any and all income or revenues from any property at any time held in trust hereunder; they may institute or defend any suit by or against the Foundation, always using their own discretion and judgment in respect thereto; they may, by private treaty had with others jointly owning with the Foundation properties, or in which it is interested, real, personal, or mixed, bring about a partition and division of such properties and set aside the same in severalty between them, and/or they may bring about such partition and division, if needs be, by appropriate Court proceedings; they may participate in any plan of reorganization, including consolidation or merger; may de-

posit any property under any plan or reorganization, or with any protective or reorganization committee; may delegate to any reorganization or protective committee discretionary powers with relation to the property so deposited, and pay its proportionate part of the expenses of such committee, and any assessments levied under such plan, and accept and retain new securities received by Managing Trustees in pursuance of any such plan; may exercise any and all conversion, subscription, and other rights of whatever nature appertaining to any property at any time held in trust hereunder, and pay such sums as they may deem advisable in connection therewith; may vote all stock held in trust, or may make, execute, and deliver proxies to vote the same.

(i) No purchaser, lender, or other person dealing with Managing Trustees shall ever be under obligation to inquire concerning the validity, necessity, or regularity of any action ever taken by them, or be bound to see to the application of any money paid or other consideration transferred or loaned to the Foundation, through such Trustees, but this paragraph shall in nowise affect the obligation of Managing Trustees properly to account to the Foundation for a faithful performance of their duties, but they shall not be liable or responsible for any error in judgment, but always the funds and properties of the Foundation shall be used in furtherance of the objects and purposes herein expressed.

(j) No Trustee, for his services strictly as such, shall receive compensation from the Foundation; but it is contemplated that the business and financial affairs of the Foundation, and its plans and policies, shall be conducted by its Managing Trustees, and it shall be lawful for any Managing Trustee, as officer, agent, attorney, or as other employee, to receive reasonable compensation for such services as may be rendered by him to the Foundation, upon two-thirds affirmative vote of the Board, not including the one being voted on. It is further contemplated that the services of others than Managing Trustees may be desirable, and if so, for such services so rendered, manual, clerical, professional (legal or otherwise), they shall receive such compensation as may be determined by the Board of Managing Trustees.

(k) All sales and leasing of the Foundation's real estate shall first be authorized either by resolution of the Board of Managing Trustees, or, if such Committee is elected, by its Executive Committee, at a meeting duly held; and such appropriate writings as are needful and necessary in respect thereto shall be executed by the Chairman or Vice-Chairman of the Board of Managing Trustees, and attested by the Executive-Secretary or Assistant Secretary, with the corporate seal of the Foundation impressed.

#### Honor roll of Navarro County

Sec. 7. Be it further enacted that the Managing Trustees shall make provision for an Honor Roll, upon which they may, from time to time, inscribe, or cause to be inscribed, the names of outstanding citizens, men or women, of Navarro County, Texas, either living or who have passed away, and whose honorable and well-spent lives have been worthy examples and a blessing to the community in which they lived; the Honor Roll shall be composed only of those whose names have been selected, at a meeting duly held, by unanimous secret ballot of all the Managing Trustees; and all the Emeritus Trustees present.

#### Officers of Foundation

Sec. 8. Be it further enacted that the administration of the business and financial affairs of Navarro Community Foundation shall be conducted by its executive officers selected by and from the Managing Trustees

who may consist of: A chairman; one or more vice-chairmen; an executive secretary and a treasurer, both of which offices may be held by the same person; general counsel; an executive committee of not less than three (3) nor more than five (5) members; and such other officers as Managing Trustees may deem advisable. The Managing Trustees may, by constitution, bylaws and/or resolution duly adopted, delegate detailed management of the Foundation's affairs to the Executive Committee, and may in like manner define the powers and duties of all officers of said Navarro Community Foundation.

#### **Powers and duties of Foundation**

Sec. 9. Be it further enacted that:

(a) Navarro Community Foundation may receive from donor or donors by will, gift or otherwise any funds or property that may be entrusted to it for the aid of any one or more, or all, of the public charitable purposes enumerated in Section 5 hereof; the corpus and/or income of such funds or property shall be used exclusively for such one or more of such purposes as donors, testators, or other patrons may direct with reference thereto; but if such donors, testators, or patrons do not specify to what particular charitable uses and purposes such donations shall be applied, then the Managing Trustees, within their discretion, may use the same, income or corpus, either or both, for any one or more, or all, of the purposes herein expressed. No misnomer of said Navarro Community Foundation shall defeat or annul any gift, grant, demise or bequest to the same.

(b) Navarro Community Foundation shall have the capacity to sue and be sued in all the courts of this State, and this Act shall be deemed a public one, judicial notice of which shall be taken without the occasion of special pleadings as to any of its contents.

(c) The Foundation shall not foster any form of philosophy—political, social, or religious—by undercover or disguised propaganda, nor invest in securities for philanthropic rather than prudent business reasons; nor finance altruistic activities offering profit to individuals; nor shall any part of its net earnings inure to the benefit of any private individuals, and no part of its activities shall be directed towards the influencing of legislation; nor shall the Foundation and its properties be operated and used in commercial ventures.

(d) The financial affairs of the Foundation shall be audited at the close of each calendar year, the audit to be made and signed by a certified public accountant and attested by the Executive Committee or by at least five (5) members of the Board of Managing Trustees; the original shall be kept in the Archives of the Foundation and made available to the public during reasonable office hours. The Managing Trustees may cause to be printed a condensed statement of such audit once each year, and may place the same into booklet form containing any other matter pertaining to and descriptive of Navarro Community Foundation which they deem of public interest and distribute the same to those who may request them, and to others as the Board may choose; the Managing Trustees may cause to be published such condensed statement once each year, in a local newspaper of general circulation in Navarro County, Texas.

#### **Constitution and bylaws**

Sec. 10. Be it further enacted that the Managing Trustees of Navarro Community Foundation shall have full authority to prepare and pass such Constitution and Bylaws, not inconsistent with this Act, for the guidance and conduct of said Foundation, as may by them be deemed

suitable and advisable. Such Constitution and Bylaws, when adopted, may be amended at any one of the regular quarterly meetings of the Board of Managing Trustees, but it shall not be competent for a called meeting of said Board of Managing Trustees to repeal and rescind any portion of such Constitution and Bylaws, unless there is a full board present.

#### Depositories of funds

Sec. 11. Be it further enacted that Navarro Community Foundation shall use as depositories of its money and securities only duly incorporated supervised financial institutions which shall be chosen by the two-thirds vote of all the Managing Trustees in a regular meeting assembled.

#### Merger and consolidation of other associations

Sec. 12. Be it further enacted that Navarro Community Foundation, upon two-thirds affirmative vote of its entire Board of Managing Trustees at any meeting duly assembled, shall have full power and authority to, and may, within the judgment and discretion of such Trustees:

(a) Absorb and take over and continue to operate, under the name of and in conjunction with this Foundation and its facilities, any other Association or Foundation created and conducted exclusively for any one or more of the purposes for which this Foundation is created, and thereafter Managing Trustees, and their successors shall have all the powers and duties in respect thereto which are given them therein;

(b) Merge or consolidate the funds, properties and affairs of this Foundation with or into another Association or Foundation created and conducted exclusively for any one or more of the purposes for which this Foundation is created, under such name as they may determine;

(c) Dissolve and liquidate the Foundation, by delivering and distributing its funds and properties for the use and benefit of any one or more of the purposes herein expressed, to such donee or donees as the Managing Trustees in their sole judgment may determine, and the trust shall terminate as to such fund and property so delivered, but shall continue as to any residue of the Foundation's funds and properties until all shall have been thus distributed.

And in furtherance of and to consummate plan (a), (b) or (c), above, after making provision for the Foundation's obligations, if any, Managing Trustees shall have full power and authority to do all things needful, necessary and appropriate to give full legal effectuality thereto; and if any plan which may be adopted under subdivisions (a), (b) or (c) of this section may require judicial sanction before it can be legally consummated, then it is hereby provided that the District Court of Navarro County, Texas, shall have exclusive venue in such cause or causes as may be instituted in furtherance thereof, or in connection therewith.

#### Gifts to Foundation

Sec. 13. Be it further enacted that all persons who may make gifts, donations, devises or bequests to Navarro Community Foundation for the benefit of one or more, or all, of its public charitable purposes, as herein enumerated, shall be conclusively presumed to have been familiar with the contents of this Act; and it shall be competent for any donor or testator to specify any one or more of such causes and to confine his, her or their benefaction to such cause, or to any institution or organization eligible to receive the aid of Navarro Community Foundation; but unless such donor or testator shall specifically confine his, her or their benefaction to one or more causes, institutions or organizations, then Navarro Community Foundation may devote or apply the same, income or corpus, either or both, to any one or all of the public charities herein defined, as the Managing Trustees thereof may determine.

**Tax exemption**

Sec. 14. Be it further enacted that all the property of Navarro Community Foundation, real, personal and/or mixed, of whatever the same may consist, and wherever the same may be situated, shall be exempt from every tax levied and/or assessed by this State and all of its subdivisions and municipalities.

**Severability of provisions of act**

Sec. 15. Be it further enacted that if any section, subsection, paragraph, sentence, or clause of this Act shall ever be held invalid for any reason, then, and in such case, such invalidity shall affect only such section, subsection, paragraph, sentence or clause; and this Act is hereby declared to be severable and it shall never fail by reason of any infirmity affecting only a portion hereof.

**Provision in case of invalidity of act or part thereof**

Sec. 16. Be it further enacted that if for any reason this Act is ever declared to be wholly invalid by any Court of competent jurisdiction, then, and in such event, the Managing Trustees holding office at such time, and their successors, shall continue ownership, as before, in trust, of all properties then vested in the corporation hereby created, and they shall conduct the same agreeable to, and consistent with, the Articles of Association under which Navarro Community Foundation was originally organized and established as a voluntary trust association, which Articles of Association were privately executed by Frank Neal Drane and others, and appear of record in the deed records of Navarro County, Texas, in Vol. 390, pages 258 et seq. Acts 1939, 46th Leg., Spec.L., p. 551.

Section 17 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to create and establish a perpetual, public charitable, nonprofit Body Corporate, to be denominated "Navarro Community Foundation," domiciled at Corsicana, Navarro County, Texas, of which Frank Neal Drane, now deceased, was the initial patron-donor; naming the trustees of said Foundation; empowering said Foundation to extend its aid to any one or more or all of the following public charitable purposes: (1) religion, (2) education, (3) relief of human suffering, (4) public civic betterment, (5) relief of the worthy poor through organized agencies, (6) the aid of scientific endeavor for the betterment of mankind; empowering said Navarro Community Foundation to own, acquire, and dispose of property in furtherance of

its purposes, and authorizing it to sue and be sued in its corporate capacity; extending its facilities to and inviting the aid of other patron-donors inclined to support its charitable purposes; providing that its Board of Managing Trustees shall be self-perpetuating and shall never be less than five (5) nor more than thirteen (13) in number; defining the powers and duties of members of the Board of Managing Trustees; providing for the absorption, merger, consolidation, dissolution, and/or liquidation of Navarro Community Foundation; declaring this Act to be a public one, judicial notice of which shall be taken in all courts; exempting from taxation the properties and assets, income and corpus, of Navarro Community Foundation; providing a saving clause; providing for continuance of Articles of Association in the event of invalidity of the Act; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 551.

**TITLE 52A—ENGINEERS [NEW]****Art. 3271a. Registration of professional engineers**

Section 1. That in order to safeguard life, health, and property, any person practicing or offering to practice the profession of engineering as hereinafter defined shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice the profession of engineering in this State, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer unless such person has been duly registered or exempted under the provisions of this Act.

**Definitions**

Sec. 2. The term professional engineer as used in this Act shall mean a person who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as hereinafter defined.

The practice of professional engineering within the meaning and intent of this Act includes any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare, or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and interpretation of engineering data.

The term "Board" as used in this Act shall mean the State Board of Registration for Professional Engineers, provided for by this Act.

**State Board of Registration for Professional Engineers—Appointment of members—Terms**

Sec. 3. A State Board of Registration for Professional Engineers is hereby created whose duty it shall be to administer the provisions of this Act. The Board shall consist of six (6) professional engineers, who shall be appointed by the Governor of the State, with the advice and consent of the Senate. The members of the first Board shall be appointed within ninety (90) days after this Act becomes effective, to serve the following terms: Two (2) members for two (2) years; two (2) members for four (4) years; and two (2) members for six (6) years, from the date of their appointment or until their successors are duly appointed and qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the State and he shall serve for a term of six (6) years or until his successor shall be appointed and qualified. Before entering upon the duties of his office each member of the Board shall take the Constitutional Oath of office and the same shall be filed with the Secretary of State. Each member of the Board first appointed hereunder shall receive a certificate of registration under this Act from said Board.

**Qualifications of members of board**

Sec. 4. Each member of the Board shall be a citizen of the United States and a resident of this State for a period of ten (10) years prior

to his appointment, and shall have been engaged in the practice of the profession of engineering for at least ten (10) years, two (2) years of which may be credited for graduation from an approved engineering school. Responsible charge of engineering teaching may be construed as the practice of professional engineering.

#### **Compensation and expenses of board members**

Sec. 5. Each member of the Board shall receive the sum of Ten (\$10.00) Dollars per day for each day he is actually engaged in the duties of his office, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of such duties. All per diem and expenses incurred hereunder shall be paid from the "Professional Engineers' Fund" as provided in this law. No money shall ever be paid for the administration of this Act from the General Funds of the State.

#### **Removal of members of board—Vacancies**

Sec. 6. The Governor may remove any member of the Board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in this Act.

#### **Organization and meetings of the board**

Sec. 7. The Board shall hold a meeting within thirty (30) days after its members are first appointed, and thereafter shall hold at least two (2) regular meetings each year. Special meetings shall be held at such time as the by-laws of the Board may provide. Notice of all meetings shall be given in such manner as the by-laws may provide. The Board shall elect or appoint annually from its own membership the following officers: a Chairman, a Vice-Chairman, and a Secretary. A quorum of the Board shall consist of not less than four (4) members.

#### **Powers of the board**

Sec. 8. The Board shall have the power to make all by-laws and rules, not inconsistent with the Constitution and laws of this State, which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The Board shall adopt and have an official seal. The Board shall have such additional power as may be conferred by other provisions of this Act.

#### **Receipts and disbursements**

Sec. 9. The Secretary of the Board shall receive and account for all moneys derived under the provisions of this Act, and shall pay the same weekly to the State Treasurer who shall keep such moneys in a separate fund to be known as the "Professional Engineers' Fund". Such fund shall be paid out only by warrant of the State Comptroller upon the State Treasurer, upon itemized vouchers, approved by the Chairman and attested by the Secretary of the Board. All moneys in the "Professional Engineers' Fund" are hereby specifically appropriated for the use of the Board in the administration of this Act. The Secretary of the Board shall give a surety bond to the Governor of the State of Texas in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars. The premium on said bond shall be paid out of the "Professional Engineers' Fund". The Secretary of the Board shall receive such salary as the Board shall determine in addition to the compensation and



expenses provided for in this Act. The Board shall employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the Board is reasonably necessary for the proper performance of its duties under this Act. Under no circumstances shall the total amount of warrants issued by the State Comptroller in payment of the expenses and compensation provided for in this Act exceed the amount of the "Professional Engineers' Fund". Provided further, that the salaries paid herein shall not be in excess of salaries paid for similar work in other departments.

#### Records and reports

Sec. 10. The Board shall keep a record of its proceedings and register of all applications for registration, which register shall show (a) the name, age and residence of each applicant; (b) the date of the application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) whether or not an examination was required; (f) whether the applicant was rejected; (g) whether a certificate of registration was granted; (h) the date of the action of the Board; and (i) such other information as may be deemed necessary by the Board.

The records of the Board shall be available to the public at all times and shall be prima facie evidence of the proceedings of the Board set forth therein, and a transcript thereof, duly certified by the Secretary of the Board under seal, shall be admissible in evidence with the same force and effect as if the original was produced.

Annually, as of August 31st, the Board shall submit to the Governor a report of its transaction of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the Board, attested by affidavits of its Chairman and its Secretary.

#### Roster of registered engineers

Sec. 11. A roster showing the names and places of business of all registered professional engineers shall be prepared by the Secretary of the Board during the month of July of each year, commencing with the month of July, 1938. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public upon request.

#### General requirements for registration

Sec. 12. The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a professional engineer, to-wit:

(a) Graduation from an approved course in engineering of four (4) years or more in a recognized school or college approved by the Board as of satisfactory standing, and a specific record of an additional four (4) years or more of active practice in engineering work, of a character satisfactory to the Board, indicating that the applicant is competent to be placed in responsible charge of such work; or

(b) Successfully passing a written, or written and oral, examination designed to show knowledge and skill approximating that attained through graduation from an approved four (4) years engineering course; and a specific record of at least eight (8) years of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is competent to be placed in responsible charge of such work.

(c) At any time within five (5) years after this Act becomes effective the Board may accept as evidence that the applicant is qualified for registration as a professional engineer a specific record of twelve (12) years or more of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is qualified to design, to operate, or to supervise construction of engineering work and has had responsible charge of important engineering work for at least five (5) years and provided applicant is not less than thirty-five (35) years of age, and was not practicing professional engineering at the time this Act becomes effective.

(d) After this Act shall have been in effect five (5) years, the Board shall issue certificates of registration only to those applicants who meet the requirements of Section 12, (a), or (b), or Section 21.

(e) Provided, that no person shall be eligible for registration as a professional engineer who is not of good character and reputation; and provided further, that any engineer licensed under this Act shall be eligible to hold any appointive engineering position with the State of Texas.

(f) In considering the qualifications of applicants, responsible charge of engineering teaching may be construed as responsible charge of engineering work. The satisfactory completion of each year of an approved course in engineering in a school or college approved by the Board as of satisfactory standing, without graduation, shall be considered as equivalent to a year of active practice. Graduation in a course other than engineering from a college or university of recognized standing shall be considered as equivalent to two (2) years of active practice; provided, however, that no applicant shall receive credit for more than four (4) years of active practice because of educational qualifications. The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as foreman or superintendent shall not be deemed to be active practice in engineering work.

(g) Any person having the necessary qualifications prescribed in this Act to entitle him to registration shall be eligible for such registration though he may not be practicing at the time of making his application.

#### **Applications and registration fees**

Sec. 13. Applications for registration shall be on forms prescribed and furnished by the Board, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be Twenty-five (\$25.00) Dollars, Fifteen (\$15.00) Dollars of which shall accompany the application, the remaining Ten (\$10.00) Dollars to be paid upon issuance of certificate. When a certificate of qualification issued by the National Bureau of Engineering Registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be Ten (\$10.00) Dollars.

#### **Examinations**

Sec. 14. When oral or written examinations are required, they shall be held at such time and place as the Board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability to design and supervise engineering works, which shall insure the safety of life, health, and property. Examinations shall be given for the

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

purpose of determining the qualifications of applicants for registration in professional engineering. A candidate failing on examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fees. Re-examination may be granted at any time upon payment of a fee to be determined by the Board.

#### **Certificates, seals**

Sec. 15. The Board shall issue a certificate of registration upon payment of registration fee as provided for in this Act, to any applicant, who, in the opinion of the Board, has satisfactorily met all the requirements of this Act. In case of a registered engineer, the certificate shall authorize the practice of professional engineering. Certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the Chairman and the Secretary of the Board under seal of the Board. The issuance of a certificate of registration by this Board shall be evidence that the person named therein is entitled to all rights and privileges of a registered professional engineer, while the said certificate remains unrevoked or unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the Board, bearing the registrant's name and the legend "Registered Professional Engineer". Plans, specifications, plats, and reports issued by a registrant shall be stamped with the said seal when filed with public authorities, during the life of the registrant's certificate, but it shall be unlawful for any one to stamp or seal any documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

#### **Expirations and renewals**

Sec. 16. Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year; such notice shall be mailed at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of Five (\$5.00) Dollars. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten (10%) per cent for each month or fraction of a month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

#### **Firms, partnerships, corporations and joint stock associations**

Sec. 17. A firm, or a co-partnership, or a corporation, or a joint stock association may engage in the practice of professional engineering in this State, provided such practice is carried on by only professional engineers registered in this State.

#### **Practitioners at time act becomes effective**

Sec. 18. At any time within one (1) year after this Act becomes effective, upon due application therefor and the payment of the registration fee of Twenty-five (\$25.00) Dollars for professional engineers, the Board shall issue a certificate of registration, without oral or written

examination, to any professional engineer who shall submit evidence under oath satisfactory to the Board that he is of good character, has been a resident of the State of Texas for at least one (1) year immediately preceding the date of his application, and was practicing professional engineering at the time this Act became effective, and has had responsible charge of work of a character satisfactory to the Board.

After this Act shall have been in effect one (1) year, the Board shall issue certificates of registration only as provided for in Section 12 or Section 21 thereof.

#### Public work

Sec. 19. After the first day of January, 1938, it shall be unlawful for this State, or for any of its political subdivisions, for any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a registered professional engineer; provided, that nothing in this Act shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed Three Thousand (\$3,000.00) Dollars. Provided, that this Act shall not apply to any road maintenance or betterment work undertaken by the County Commissioners' Court.

#### Exemptions

Sec. 20. The following persons shall be exempt from the provisions of this Act, to-wit:

(a) A person not a resident of and having no established place of business in this State, practicing or offering to practice here the profession of engineering, when such practice does not exceed in the aggregate more than sixty (60) days in any calendar year; provided, such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act.

(b) A person not a resident of and having no established place of business in this State, or who has recently become a resident thereof, practicing or offering to practice herein for more than sixty (60) days in any calendar year the profession of engineering, if he shall have filed with the Board an application for a certificate of registration and shall have paid the fee required by this Act. Such exemption shall continue only for such time as the Board requires for the consideration of the application for registration; provided, that such a person is legally qualified to practice said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act.

(c) An employee or a subordinate of a person holding a certificate of registration under this Act, or any employee of a person exempted from registration by classes (a) and (b) of this section; provided, his practice does not include responsible charge of design or supervision.

(d) Officers and employees of the Government of the United States while engaged within this State in the practice of the profession of engineering for said Government.

(e) Nothing in this Act shall be construed to apply to persons doing the actual work of installing, operating, repairing, or servicing locomotive or stationary engines, steam boilers, Diesel engines, internal combustion engines, refrigeration compressors and systems, hoisting engines,

electrical engines, air conditioning equipment and systems, or mechanical and electrical equipment and apparatus; nor shall this Act be construed to prevent any citizen from identifying himself in the name and trade of any engineers' labor organization with which he may be affiliated. Provided, however, that nothing in this Act shall be construed as permitting any person other than a licensed professional engineer affixing his signature as such to engineering plans, specifications or estimates.

(f) Nothing in this Act shall be construed to apply to persons erecting or building any private dwelling.

#### Reciprocity

Sec. 21. The Board may, upon application therefor, and the payment of a fee of Ten (\$10.00) Dollars, issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the National Council of State Boards of Engineering Examiners, or of the National Bureau of Engineering Registration, or of any state or territory or possession of the United States, or any country provided that the requirements for the registration of professional engineers under which said certificate of qualification or registration was issued do not conflict with the provisions of this Act and are of a standard not lower than that specified in Section 12 of this Act.

#### Revocations and re-issuances of certificates

Sec. 22. The Board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a registered professional engineer.

In determining any such charges the Board shall proceed upon sworn information furnished it by any reliable resident of this State; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three (3) copies of the same shall be filed with the Secretary of the Board. Upon receipt of such information the Board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the Secretary of the Board shall cause a copy of the Board's order and of the information to be served upon the accused at least thirty (30) days before the date appointed in the order for the hearing. The accused may appear in person or by counsel, or both, at the time and place named in the order and make his defense to the same. If the accused fails or refuses to appear, the Board may proceed to hear and determine the charges in his absence. If the accused pleads guilty, or upon a hearing of the charges the Board and a majority of its members shall find them to be true, it may enter an order revoking the certificate of registration of such registered professional engineer. The Board shall have the power, through its Chairman or Secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court by subpoena issued over the signature of the Secretary and seal of the Board. If the accused desires the evidence to be preserved and shall so inform the Board before the hearing is begun and shall deposit with the Board such a sum of money as the Board may deem reasonably necessary for the employment of a stenographer, then the Board shall employ such stenographer and when so employed he shall be the official stenographer of the Board

for the purpose of reporting the evidence and proceedings of such Board. In proceedings under this section, as under others, a majority of the Board shall constitute a quorum.

When the Board has completed such hearing it shall make a record of its findings and order and shall cause a certified copy thereof to be forwarded to the accused.

Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration by the Board, as hereinabove authorized, shall have the right to file suit within thirty (30) days after receiving notice of the Board's order revoking his certificate of registration, in the district court of the county of his residence, or of the county in which the alleged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the certificate of registration. Said suit shall be filed against the Board as defendant, and service of process may be had upon its Chairman or Secretary. The suit shall be tried as other civil causes, the burden of proof devolving upon the plaintiff assailing the order of revocation.

The Board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, provided four (4) or more members of the Board vote in favor of such re-issuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of Three (\$3.00) Dollars shall be made for such issuance.

#### Violations and penalties

Sec. 23. On or after the first day of January, 1938, any person who shall, practice, or offer to practice, the profession of engineering in this State without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a certificate of registration, or any person who shall violate any of the provisions of this Act, be fined not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars, or be confined in jail for a period of not exceeding three (3) months, or both. Each day of such violation shall be a separate offense.

The Board is charged with the duty of aiding in the enforcement of the provisions of this Act, and any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this Act; and the Board through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violation of said statutes, subject to the control of the prosecuting officers.

The Attorney General or his assistants shall act as legal adviser of the Board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

#### Invalid portions

Sec. 24. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and such section, subsection, sentence, clause or phrase there-

of irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Repeal of conflicting legislation with proviso**

Sec. 25. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. Provided, however, that this Act shall not be construed as repealing or amending any law affecting or regulating licensed state land surveyors; and such licensed state land surveyors in performing their duties as such shall not be subject to the provisions of this Act; nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed by the State or under its authority. Acts 1937, 45th Leg., p. 816, ch. 404.

Section 26 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act defining and regulating the practice of professional engineering in the State of Texas; providing for the creation of the State Board of Registration for Professional Engineers and prescribing their powers and duties, terms of office, qualifications and for payment of their compensation and expenses out of the "Professional Engineering Fund" as provided in this law; providing for removal of members of the Board for cause; providing for creation of "Professional Engineers' Fund" and appropriating money therefrom; prescribing requirements for registration of professional engineers; providing for registration fees and for examinations of applicants for certificate of registration and for issuance and use of certificates and seals; providing for issuance of renewal certificates on payment of renewal fees; providing that a firm, co-partnership, corporation or joint stock association may engage in the practice of professional engineering in this State provided such practice is carried on by only professional engineers registered in this State; providing for issuance, within one year after this Act becomes effective, of certificates, on certain conditions, to residents of Texas practicing professional engineering in Texas at time this Act becomes effective; providing that after January 1, 1938, it shall be unlawful for this State, or any of its political subdivisions, or any county, city or town, to engage in the construction of public work involving professional engineering, unless plans, specifications and estimates have been prepared for the construction to be executed under direct supervision of a registered professional engineer, provided that such

provision shall not apply to any public work wherein the contemplated expenditure for a completed project does not exceed Three Thousand (\$3,000.00) Dollars; providing for certain exemptions; prescribing certain reciprocity provisions for professional engineers holding certificates of registration as such issued under authority of National Council of State Boards of Engineering Examiners, or National Bureau of Engineering Registration, or any state or territory or possession of the United States, or any country, under certain conditions; providing the grounds on which the Board may revoke certificates of registration and for hearings on such charges; providing for suit against the Board in certain district courts to annul or vacate order of the Board revoking certificate of registration; defining as a misdemeanor certain acts committed after the first day of January, 1938, prescribing the penalties for such violations and that each day of such violation shall be a separate offense; prescribing duties of the Board in connection with enforcement of provisions of this Act and duties of Attorney General and his assistants as legal advisers of the Board, declaring certain legislative intent in respect to this Act; repealing conflicting laws, provided, however, that this Act shall not be construed as repealing or amending any law affecting or regulating licensed state land surveyors and that licensed state land surveyors in performing their duties as such shall not be subject to the provisions of this Act; and further providing that this Act shall not be construed to affect or prevent the practice of any other legally recognized profession by members of such profession licensed by the State, and declaring an emergency. Acts 1937, 45th Leg., p. 816, ch. 404.

## TITLE 54—ESTATES OF DECEDENTS

CHAPTER FOUR—APPLICATIONS FOR THE PROBATE OF WILLS  
AND FOR LETTERS

## THE CITATION

Art.  
3334b. Validation [New].

## THE CITATION

## Art. 3334b. Validation

In all cases where written wills produced in Court have been probated or letters of administration have been granted after citation, as provided by Article 3334, Title 54 of the Revised Civil Statutes of Texas, without service of citation as provided for in Article 3336, Title 54 of the Revised Civil Statutes of Texas as amended by Acts 1935, Forty-fourth Legislature, Page 659, Chapter 273, Section 1, such service of citation and the action of the Court in admitting said wills to probate and/or granting administration upon estates, is hereby validated in so far as service of citation is concerned. Added Acts 1939, 46th Leg., p. 318, § 1.

Sec. 1a provided that the provisions of the Act should not be applicable to the issues in any lawsuit or in any contested probate proceeding pending in any court of the State on the effective date of the Act.

Section 2 declared an emergency and provided that the act should take effect from and after its passage.

## Art. 3336. 3259, 1892, 1839 Service of citation

If the heirs of the testator be residents of this State, and their residence be known, the citation provided for in Article 3335 shall be served upon them by delivering to each of them in person a true copy of such citation, at least ten (10) days before the return day thereof. As amended Acts 1939, 46th Leg., p. 319, § 1.

The amendatory act of 1939 inserted the words, "provided for in Article 3335."

declared an emergency and provided that the act should take effect from and after its passage.

Section 2 of the amendatory act of 1939

## CHAPTER SIX—GRANTING LETTERS

## Art. 3370. 3294, 1927, 1874 Letters of administration

Before granting letters of administration, it must appear to the Court:

1. That the person is dead.
2. That four (4) years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That there is a necessity for an administration upon such estate; such necessity shall be deemed to exist if two or more debts exist against the estate, or if or when it is desired to have the county court partition the estate among the owners in accordance with the provisions of Chapter 24, Title 54, Revised Civil Statutes of Texas, 1925.
5. That the person to whom the letters are about to be granted is entitled thereto by law and is not disqualified.

The first three (3) subdivisions of this Article have no application when letters testamentary or of administration have been previously



granted upon such estate by said Court. As amended Acts 1939, 46th Leg., p. 320, § 1.

The amendatory Act of 1939, cited to the text, added the provision stating when necessity for administration is deemed to exist.

Sec. 2 of the Act provided: "The provisions of this Act shall not be effective until January 1, 1940."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## CHAPTER EIGHT—OATH AND BOND OF EXECUTORS AND ADMINISTRATORS

### Art. 3393a. Decrease of amount of bond

At any time, an executor or administrator, required by law to give bond, may apply to the County Judge upon citation issued out of the County Court to the legatees, next of kin, and surety or sureties on the bond, to have such bond reduced; and the County Judge, in his discretion, upon the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the estate and upon the approval of an accounting filed at the time of the application, may permit the filing of a new bond in a reduced amount, and provide for the discharge of the former bond and surety or sureties as to liability for matters subsequent to the filing of the new bond. As amended Acts 1939, 46th Leg., p. 321, § 1.

Section 2 of the amendatory Act of 1939 amended article 3396; section 3 repeals all conflicting laws and parts of laws. Sec-

tion 4 declared an emergency and provided that the act should take effect from and after its passage.

### Art. 3396. 3320, 1953, 1900 Citation

The citations required in the three preceding Articles shall require the party cited to appear before the County Judge on the day named therein, and shall be served personally at least ten (10) days before the return day thereof, provided, however, that if the party to be cited is not a resident within the county, service may be effected by mailing by registered mail, return receipt requested, to his last known address, a true copy of such citation at least thirty (30) days before the return day thereof. As amended Acts 1939, 46th Leg., p. 321, § 2.

## CHAPTER TEN—INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Art.

3410—a. List of claims attached to inventory [New].

Art.

3410—b. Filing list of debts and claims with reference to inheritance taxes [New].

### Art. 3410-a. List of claims attached to inventory

Such executor or administrator shall also make and attach to said inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the names of the parties owing the same, the dates thereof, and the dates when due, and the rate of interest each one bears, and shall also specify what portion of such claims is the separate property of the deceased and what portion, if any, is represented as common property. Acts 1937, 45th Leg., p. 391, ch. 193, § 1.

Section 2 of this act declared an emergency making the act effective on and after its passage.

**Art. 3410-b. Filing list of debts and claims with reference to inheritance taxes**

Every executor, administrator, or legal representative of any estate shall make and file with the County Clerk of the County in which such estate is pending and with the Comptroller of the State of Texas, in addition to the information now required by law pertaining to inheritance taxes, a statement showing a full and complete list of all debts and claims due or owing by the testator or intestate known by such executor, administrator, or legal representative at the time of the approval of the inventory and appraisal by the Probate Judge, with reference to inheritance taxes as now required by law, showing the nature of such claims, the names of the parties to whom such debts or claims are owing, the dates thereof, the dates when due, the rate of interest each one bears, and what portion of such claims is chargeable to the separate property of the deceased, and what portion, if any, of such claims is chargeable to the common property of the deceased. Provided that the provisions of this Act shall in nowise repeal any of the provisions of the law now pertaining to inheritance taxes, but shall be cumulative thereto. Acts 1937, 45th Leg., p. 391, ch. 193, § 1.

See historical note to article 3410a.

**CHAPTER TWENTY-FOUR—PARTITION AND DISTRIBUTION****Art. 3605. 3534, 2161, 2106 Guardians for minors, etc.**

Where there are minors, or non compos mentis, having no guardian in this State who are entitled to a portion of an estate, or whose guardians also have an interest in the estate, the Court shall appoint a guardian ad litem to represent such minors, or non compos mentis and shall appoint an attorney to represent nonresident and unknown parties, having an interest if there be any. As amended Acts 1937, 45th Leg., p. 499, ch. 250, § 1.

Section 2 of the amendatory act of 1937 declared an emergency making the act effective on and after its passage.

## TITLE 55—EVIDENCE

## 1. WITNESSES AND EVIDENCE

Art.

3737c. Certified copies of records or instruments pertaining to oil industry [New].

## 1. WITNESSES AND EVIDENCE

## Art. 3704. 3640, 2264, 2209 Witnesses subpoenaed

The Clerk of the District or County Court, or Justice of the Peace, as the case may be, at the request of any party to a suit pending in his court, or of any agent or attorney, shall issue a subpoena for any witness or witnesses, male or female, who may be represented to reside within the county or be found therein at the time of the trial. As amended Acts 1939, 46th Leg., p. 323, § 1.

Effective April 18, 1939.

Section 8 of the amendatory Act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

## Art. 3705. 3641, 2265, 2210 Form of subpoena

The style of the subpoena shall be "The State of Texas." It shall state the names of the parties to the suit, the court in which the same is pending, the time and place at which the witness is required to appear, and the party at whose instance the witness is summoned. It shall be dated and tested by the Clerk or Justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any day for which trial of the cause may be set. As amended Acts 1939, 46th Leg., p. 323, § 2.

Effective April 18, 1939.

Emergency section. See note under article 3704, ante.

## Art. 3706. 3642, 2266, 2211 Service of

Subpoenas may be executed and returned at any time before the trial of the cause, and shall be served by being read to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena. As amended Acts 1939, 46th Leg., p. 323, § 3.

Effective April 18, 1939.

Emergency section. See note under article 3704, ante.

## Art. 3707. [3643] [2267] [2212] Witness shall attend

Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning such witness. If any witness, after being duly summoned, shall fail to attend, such witness may be fined by the court as for a contempt of court, and an attachment may issue against the body of such witness to compel the attendance of such witness; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that all lawful fees have been paid or tendered to such witness. As amended Acts 1939, 46th Leg., p. 323, § 4.

Effective April 18, 1939.

Emergency section. See note under article 3704, ante.

**Art. 3709. 3645, 2269, 2214 Refusal to testify**

Any witness refusing to give evidence may be committed to jail, there to remain without bail until such witness shall consent to give evidence. As amended Acts 1939, 46th Leg., p. 323, § 5.

Effective April 18, 1939.

Emergency section. See note under article 3704, ante.

**Art. 3711. [3647] [2271] [2216] Party as a witness**

Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel the attendance of such witness as in the case of any other witness. The examination of any such witnesses shall be conducted, and the testimony of any such witnesses shall be received, under the same rules applicable to other witnesses. As amended Acts 1939, 46th Leg., p. 323, § 6.

Effective April 18, 1939.

Emergency section. See note under article 3704, ante.

**Art. 3726. 3700, 2312, 2257 Recording instruments entered without proof**

Every instrument of writing which is permitted or required by law to be recorded in the office of the Clerk of the County Court, and which has been, or hereafter may be, so recorded, after being proved or acknowledged in the manner provided by the laws of this State in force at the time of its registration, or at the time it was proved or acknowledged; or every instrument which has been, or hereafter may be actually recorded for a period of ten (10) years in the book used by said Clerk for the recording of such instruments, whether proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this State without the necessity of proving its execution; provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that ten (10) years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it, at least three (3) days before the commencement of the trial of such suit, and give notice of such filing to the opposite party or his attorney of record; and unless such opposite party, or some other person for him, shall, within three (3) days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. And whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of ten (10) years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence, that the certificate of the officer who took such proof or acknowledgment, is not in form or substance such as required by the laws of this State; and said instrument shall be given the same effect as if it were not so defective. If the land to which the instrument pertains is situated within the county in which the suit is pending, the party desiring to offer in evidence recorded instruments, may do so by filing a list of such instruments at least ten (10) days before the trial, giving the volume and the page wherein such instruments are recorded; and unless an affidavit is filed by the opposite party at least three (3) days before trial, stating that he believes such instruments of writing to be forged, then the party filing

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such lists of instruments shall be entitled to read the same from the record. A copy of a list of such instruments shall be filed with the Clerk of the County Court at least three (3) days before the trial of a case and said County Clerk shall on the day of the trial deliver, or cause to be delivered, to the Court in which the case is pending, all of the records requested, and said Clerk shall not charge for the use of said records. As amended Acts 1939, 46th Leg., p. 325, § 1.

Filed without the Governor's signature,  
May 31, 1939.

declared an emergency and provided that  
the act should take effect from and after  
its passage.

#### Art. 3737c. Certified copies of records or instruments pertaining to oil industry

Certified copies of well logs, and records, plugging records, oil and gas production records or reports and all other instruments pertaining to the drilling, completion, operation, abandonment, or plugging of oil and/or gas wells, in this State, required by Statute or by rules heretofore or hereafter adopted by the Railroad Commission of Texas, to be filed with the Railroad Commission of Texas, and which have been heretofore or may be hereafter filed with said Railroad Commission of Texas, shall be admissible in evidence: Such certificate to any such certified copies may be made by any member of the Railroad Commission of Texas, or by the Secretary of said Commission. [Acts 1937, 45th Leg., p. 1118, ch. 449, § 1.]

Effective June 8, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the admissibility in evidence of certified copies of certain in-

struments required by Statute or by Rules of the Railroad Commission of Texas to be filed with the Railroad Commission of Texas; authorizing certificates to such copies to be made by certain officials therein specified; and declaring an emergency. [Acts 1937, 45th Leg., p. 1118, ch. 449.]

## 2. DEPOSITIONS

#### Art. 3738. 3649, 2273, 2218. Depositions of witnesses

Depositions of witnesses may be taken when the party desires to perpetuate the testimony of a witness, and, in all civil suits heretofore or hereafter brought in this State, whether the witness resides in the county where the suit is brought or out of it; provided, the failure to obtain the deposition of any witness, male or female, residing in the county in which the suit is pending shall not be regarded as want of diligence where diligence has been used to secure the personal attendance of such witness by the service of subpoena or attachment, under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless such witness is about to leave, or has left the State or county in which the suit is pending and will not probably be present at the trial. As amended Acts 1939, 46th Leg., p. 323, § 7.

Effective April 18, 1939.

Emergency section. See note under article 3704, ante.

#### Art. 3740. 3651, 2275, 2220. Notice of publication

In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he cannot be found, or has died since the commencement of the suit and such death has been suggested at a prior term of the court, so

that the notice and copy of interrogatories cannot be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, once each week for two (2) consecutive weeks, stating the number of the suit, the names of the original parties, in what court the suit is pending, name and residence of the witness to whom the interrogatories are propounded, and that a commission will issue on or after the fourteenth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases. As amended Acts 1939, 46th Leg., p. 327, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory act of 1939

declared an emergency and provided that the act should take effect from and after its passage.

## TITLE 60—FEEDING STUFF

### Art. 3881. Weights

Feeding stuff shall have the following standard net weights per sack or container: one hundred and forty-three pounds, one hundred and thirty-three and one-third pounds, one hundred and twenty-five pounds, one hundred pounds, or the following fractions of one hundred: three-fourths, one-half, one-fourth, one-sixth, one-eighth, one-tenth, one-twelfth, one-sixteenth, and one-twentieth. No tax tags shall be issued for any feeding stuff which does not conform to the weights herein prescribed. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1986, ch. 61, § 1.]

Effective Oct. 27, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

## TITLE 61—FEES OF OFFICE

## CHAPTER ONE—GENERAL PROVISIONS

<p>Art. 3883c. County judge, sheriff, district attorney, assessor, and other officers in counties of 250,000 to 325,000 population [New].</p> <p>3883c—1. County judge, county attorney, county clerk, sheriff, assessor, and collector in counties of 18,528 to 18,535 [New].</p> <p>3883d. Sheriff, tax collector-assessor, county clerk, county judge and other officers in counties of 48,530 to 48,930 [New].</p> <p>3887a. Compensation of county attorneys in counties of 48,540 to 48,800 population [New].</p> <p>3901—1. Maximum fees of collectors—assessors in counties of 13,350 to 13,440 population [New].</p> <p>3903c. Assistant to County Judge in counties of 48,600 to 49,000; salary [New].</p>	<p>Art. 3912e—1. Compensation of designated district, county, and precinct officers in counties of 300,000 [New].</p> <p>3912e—2. Compensation of certain district, county, and precinct officers in counties of 355,000; appointment of assistants to district attorneys [New].</p> <p>3912e—3. Salary of county judge in counties of 12,227 to 12,230 [New].</p> <p>3912f—1. Salaries of sheriffs and deputies in counties of 27,235 to 27,300 population; appointment of deputies [New].</p> <p>3912f—2. Salary of chief deputy in office of sheriff, tax collector and assessor in counties of 6,000 to 6,200 population [New].</p>
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**Art. 3883. 3881 to 3883 Maximum fees**

Except as otherwise provided in this Act, the annual fees that may be retained by precinct, county and district officers mentioned in this Article shall be as follows:

2. In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, and in which there is no city containing twenty-five thousand (25,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-seven Hundred and Fifty Dollars (\$2750) each; Justice of the Peace and Constable, Fifteen Hundred Dollars (\$1500) each; provided, however, that in all counties with a taxable valuation for county purposes of not less than Fifty-one Million, One Hundred Thousand Dollars (\$51,100,000) nor more than Fifty-one Million, Four Hundred Thousand Dollars (\$51,400,000), and in all counties with a taxable valuation for county purposes of not less than Twenty-seven Million, Nine Hundred and Fifty Thousand Dollars (\$27,950,000) nor more than Twenty-seven Million, Nine Hundred and Sixty Thousand Dollars (\$27,960,000), according to the tax rolls as prepared by the Tax Assessor-Collector of the respective counties for the current year 1938, the county Commissioners Courts in such counties shall have the power to set and establish annually the maximum amount of the fees collected by the Justices of the Peace and Constables which shall be retained by such officers as compensation for their services; provided, however, that the maximum amount so set and established by the county Commissioners Courts as the amount to be retained by such officers shall in no event exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, and provided further, that the compensation for such officers as provided for herein shall be due and payable the first of each month, and the pro rata compensation or fees to be retained for any quarter of the fiscal year shall in no event exceed Nine Hundred Dollars (\$900) and such Nine Hundred

Dollars (\$900) shall be paid only out of fees collected by such officers during the quarter to which such Nine Hundred Dollars (\$900) limit applies, and in the event the county Commissioners Courts of such counties shall set and establish the maximum amount of fees to be retained by such officers at an amount less than Three Thousand, Six Hundred Dollars (\$3,600) then the same provisions, conditions, and limitations as set out above shall be applicable and shall be applied to any and all such lesser payments as may be provided by the county Commissioners Courts of such counties. As amended Acts 1937, 45th Leg., p. 574, ch. 284, § 1; Acts 1937, 45th Leg., p. 798, ch. 391, § 1; Acts 1939, 46th Leg., Spec.L., p. 737, § 1.

Effective June 13, 1939.

Section 2 of amendatory Act of 1939 declared an emergency and provided that the

Act should take effect from and after its passage.

8. Provided that in any county in this State having a population of not less than seventy-seven thousand, seven hundred and fifty (77,750) nor more than eighty-eight thousand, seven hundred and fifty (88,750), according to the last preceding Federal Census of the United States, Justices of the Peace and Constables shall have and receive as fees of office Twenty-seven Hundred and Fifty Dollars (\$2750) each per annum. Provided that such Justices of the Peace and Constables shall also receive excess fees in addition thereto by retaining one-third of such excess fees until such one-third of such excess fees, together with the said amount of Twenty-seven Hundred and Fifty Dollars (\$2750), equals the sum of Three Thousand Dollars (\$3,000). As added Acts 1937, 45th Leg., p. 798, ch. 391, § 2.

Effective May 22, 1937.

Provided, however, in any county in this State having a population less than twenty thousand (20,000) inhabitants, and which has a tax valuation of not less than Seventeen Million (\$17,000,000.00) Dollars and not exceeding Twenty-five Million (\$25,000,000.00) Dollars according to the last approved tax roll, and with a total area of not less than nine hundred fifty (950) square miles and not exceeding nine hundred eighty (980) square miles, the officers herein enumerated shall receive the maximum set forth in Section 3 Article 3883 as herein amended, and shall also receive excess fees as provided in counties containing a population of between thirty-seven thousand five hundred and one (37,501) and less than sixty thousand (60,000) inhabitants, as provided in Article 3891 as herein amended. As amended Acts 1939, 46th Leg., Spec.L., p. 735, §§ 1, 2.

Effective March 15, 1939.

Section 3 of the amendatory act of 1939 declared an emergency and provided

that the act should take effect from and after its passage.

**Art. 3883b. Repealed by Acts 1937, 45th Leg., p. 602, ch. 302, § 1**

Effective May 10, 1937.

Prior to its repeal this article was Acts 1931, 42nd Leg., Spec.L., p. 355, ch. 174, § 1.

**Art. 3883c. County judge, sheriff, district attorney, assessor, and other officers in counties of 250,000 to 325,000 population**

Section 1. The County Judge, Sheriff, District Attorney, or Criminal District Attorney, as the case may be, County Clerk, District Clerk, and the Assessor and Collector of Taxes; in any county having a population of more than two hundred fifty thousand (250,000) inhabitants, and less than three hundred twenty-five thousand (325,000) inhabitants, according to the last preceding, or future Federal Census, shall receive a salary of Seven Thousand Four Hundred (\$7,400.00)



Dollars per annum from the Officer's Salary Fund, or General Fund, as the case may be; and the Seven Thousand Four Hundred (\$7,400.00) Dollars salary shall include the compensation to the County Judge allowed in Senate Bill 186, 45th Legislature, Regular Session, Acts 1937;<sup>1</sup> the compensation herein fixed for the Sheriff shall be exclusive of any reward received for the apprehension of criminal fugitives from justice, and reward received from the recovery of stolen property; and the per capita payments made by the State to the Counties in lieu of felony fees formerly paid to the officers shall be apportioned by the Commissioners' Courts as follows: after paying the fees to precinct officers rendering service in felony cases, pay to the District Clerk and the Sheriff the same amount each officer earned in felony fees during the year 1935, and the remaining balance shall be paid to the District Attorney or Criminal District Attorney, as the case may be; and in all such Counties the County Auditor shall receive a salary of Six Thousand (\$6,000.00) Dollars per annum, to be paid from the General Fund of the County, and the County Commissioners in such Counties shall receive a salary of Forty-eight Hundred (\$4,800.00) Dollars annually, payable monthly from the Road and Bridge Fund of such County.

**Sworn statement; failure to file; proceedings to collect unreported fees**

Sec. 2. In all counties having a population in excess of two hundred fifty thousand (250,000) inhabitants, and less than three hundred twenty-five thousand (325,000) inhabitants, each District, County, and Precinct Officer, except the County Treasurer and County Commissioners, at the close of each fiscal year (December 31) shall make to the District Court of such County a sworn statement in triplicate, on forms designed and approved by the County Auditor, a copy of which statement shall be forwarded to the State Auditor by the Clerk of the District Court of said County within fifteen (15) days after the same has been filed in his office, and one copy shall be filed with the County Auditor. Said report shall show the amount of fees, commissions, and compensations collected by him during the fiscal year and their disposal. Said report shall show the names of Deputies and Assistants employed by him during the year, the time served, and the amount paid or to be paid each. Said report shall be filed not later than January 15th following the close of the fiscal year. For failure to file said report said officer shall be subject to removal from office. The County Auditor shall audit such report, also any and all books authorized by Section "N" or any other Section of this Act daily, monthly, or annually that he shall deem necessary and shall file his report with the Commissioners' Court and file with the District or Criminal District Attorney a detailed report of all fees, commissions, and compensation collected by said Officers and not reported by them; also list of cases filed since January 1, 1936, in which any County or District Clerk or Justice of the Peace has not taken adequate security for costs or required a pauper's oath.

It shall be the duty of the District or Criminal District Attorney to institute proceedings for the collection of such fees, commissions, and compensations collected by such Officer and not reported, all of which are declared to be the property of the county and shall be deposited in the General Fund.

**Repeal of conflicting laws**

Sec. 3. It is hereby declared to be the intention of the Legislature that the provisions of this Section control in all things as to the Coun-

ties affected hereby, and any and all laws in conflict herewith, are hereby expressly repealed to the extent of each conflict. [Acts 1937, 45th Leg., p. 1274, ch. 476.]

1 Article 5142b.

Effective June, 9, 1937.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act relating to the compensation and annual report of the County Judge, Sheriff, District Attorney or Criminal District Attorney, as the case may be, the Assessor and Collector of Taxes, County Clerk, and District Clerk, in all counties having

a population in excess of two hundred fifty thousand (250,000), and less than three hundred twenty-five thousand (325,000) inhabitants, according to the last preceding, or any future, Federal Census, and also relating to the compensation of County Auditors and County Commissioners in all such Counties; repealing all laws, or parts of laws, in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 1274, ch. 476.]

**Art. 3883c—1. County judge, county attorney, county clerk, sheriff, assessor, and collector in counties of 18,528 to 18,535.**

In all counties in this State having a population of not less than eighteen thousand five hundred twenty-eight (18,528) and not more than eighteen thousand five hundred thirty-five (18,535) according to the last preceding Federal Census, the County Judge, the County Attorney, County Clerk, County Sheriff, Tax Assessor and Tax Collector shall receive maximum fees of Two Thousand Seven Hundred Fifty (\$2,750.00) Dollars each per year; the Justice of Peace and Constable One Thousand Five Hundred (\$1,500.00) Dollars each per year. Acts 1939, 46th Leg., Spec.L., p. 734, § 1.

Effective April 24, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act fixing the maximum fees of county officials in certain counties containing a

population of not less than eighteen thousand five hundred twenty-eight (18,528) and not more than eighteen thousand five hundred thirty-five (18,535) according to the last preceding Federal Census, and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 734.

**Art. 3883d. Sheriff, tax collector-assessor, county clerk, county judge and other officers in counties of 48,530 to 48,930**

Section 1. That from and after January 1, 1940, being the effective date of this Act in all counties in this State having a population of not less than forty-eight thousand, five hundred and thirty (48,530) and not more than forty-eight thousand, nine hundred and thirty (48,930), according to the last preceding Federal Census, the Commissioners Court shall have the power and authority to fix the salaries of the sheriff, the tax assessor-collector, the county clerk, the county judge, the district clerk, and the county attorney; provided, however, that the salary of the sheriff shall not be fixed in excess of the sum of Four Thousand, Two Hundred and Fifty Dollars (\$4,250) per annum, nor less than the sum of Three Thousand, Six Hundred Dollars (\$3,600) per annum; the salary of the tax assessor-collector shall not be fixed in excess of the sum of Four Thousand Dollars (\$4,000) per annum, nor less than the sum of Three Thousand, Six Hundred Dollars (\$3,600) per annum; the salary of the county clerk shall not be fixed in excess of the sum of Four Thousand Dollars (\$4,000) per annum, nor less than the sum of Three Thousand, Three Hundred Dollars (\$3,300) per annum; the salary of the county judge shall not be fixed in excess of the sum of Three Thousand, Two Hundred Dollars (\$3,200) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars (\$2,700) per annum; the salary of the district clerk shall not be fixed in excess of the sum of Three Thousand, Three Hundred Dollars (\$3,300) per annum, nor less than the

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sum of Two Thousand, Seven Hundred Dollars (\$2,700) per annum; the salary of the county attorney shall not be fixed in excess of the sum of Three Thousand Dollars (\$3,000) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars (\$2,700) per annum.

Sec. 2. All such salaries shall be paid in twelve (12) equal installments per year, and paid from funds now provided by law for payment of such officials. Acts 1939, 46th Leg., Spec.L., p. 739.

Effective Jan. 1, 1940.

Section 3 of this Act repeals all conflicting laws and parts of laws to the extent of the conflict only.

**Title of Act:**

An Act authorizing and empowering the Commissioners Court to fix the compensation of the sheriff, tax collector-assessor, county clerk, county judge, district clerk, and county attorney in all counties in this State having a population of not less than forty-eight thousand, five hundred and

thirty (48,530) and not more than forty-eight thousand, nine hundred and thirty (48,930), according to the last preceding Federal Census; fixing maximum and minimum salaries for such officers; fixing the mode and manner of the payment of such salaries; fixing the effective date of this Act; repealing all laws and parts of laws in conflict herewith, to the extent of the conflict only. Acts 1939, 46th Leg., Spec. L., p. 739.

**Art. 3886d. Investigators and stenographers for District Attorneys in counties of less than 30,000**

Provided that in any county in this State having a population less than thirty thousand (30,000) inhabitants, according to last preceding Federal Census, and which has a tax valuation exceeding Sixty Million Dollars (\$60,000,000.00), according to the last tax roll approved as required by law, the District Attorney or Criminal District Attorney may if and when in his judgment the efficient conduct of his office so requires, appoint a criminal investigator who shall receive a salary not to exceed Three Thousand Dollars (\$3,000.00) per year. Such District Attorney or Criminal District Attorney may also, if in his judgment the efficient conduct of his office so requires, appoint a stenographer for said office, who shall receive a salary of not more than Eighteen Hundred Dollars (\$1800.00) per year. The salary of such investigator and stenographer shall be payable out of the General Fund of the county in which they are appointed, in twelve (12) equal installments, upon the certificate of the District Attorney or Criminal District Attorney of such county.

Provided, that in Montgomery County, the District Attorney of the Ninth Judicial District may, if and when in his judgment the efficient conduct of his office so requires, appoint a criminal investigator in and for Montgomery County, who shall receive a salary of not to exceed Eighteen Hundred Dollars (\$1800) per year. The salary of such investigator shall be payable out of the General Fund of Montgomery County, Texas, in twelve (12) equal installments upon the certificate of the District Attorney of said District. As amended Acts 1939, 46th Leg., Spec.L., p. 751, § 1.

Effective March 15, 1939.

Section 2 of the amendatory act of 1939 read as follows: "Nothing in this Act shall be construed to repeal or in any manner affect any law now in existence with reference to investigators or stenog-

raphers in Judicial Districts not included in this Act."

Section 3 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Art. 3887a. Compensation of county attorneys in counties of 48,540 to 48,800 population**

In all counties in the State of Texas having a population of more than forty-eight thousand five hundred and forty (48,540) and less than forty-eight thousand eight hundred (48,800), according to the

last preceding or any future Federal Census, where the Commissioners' Court shall have determined, or shall determine, to compensate the county attorney of such counties upon an annual salary basis according to law, such Court shall fix the salary of such county attorneys at not to exceed Two Thousand Four Hundred (\$2,400.00) Dollars per annum. [Acts 1937, 45th Leg., 2nd C.S., p. 1878, ch. 11, § 1.]

Effective Nov. 8, 1937.

This act was filed Nov. 8, 1937, without Governor's signature.

Sec. 2 of the Act cited to the text provided that: "All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only." Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act fixing the compensation of the

county attorneys in all counties in the State of Texas having a population of more than forty-eight thousand five hundred and forty (48,540) and less than forty-eight thousand eight hundred (48,800), according to the last preceding or any future Federal Census, repealing all laws and parts of laws in conflict herewith to the extent of such conflict only, and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1878, ch. 11.]

#### Art. 3899. [3897] Expense account

(a) At the close of each month of his tenure of office each officer named herein who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary expenses. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor, purchase equipment for a bureau of criminal identification such as cameras, finger print cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment in keeping with the system in use by the Department of Public Safety of this State or the United States Department of Justice and/or Bureau of Criminal Identification. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to Assistants and Deputies shall also be clearly shown by such officer, giving the name, position and amount paid each; and in no event shall any officer show any greater amount than actually paid any such Assistant or Deputy. The amount of such expenses, together with the amount of salaries paid to Assistants, Deputies and Clerks shall be paid out of the fees earned by such officer. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor, allow one or more automobiles to be used by the Sheriff in the discharge of his official duties, which, if purchased by the County, shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be and remain the property of the county. The expense of maintenance, depreciation and operation of such automobiles as may be allowed, whether purchased by the county or owned by the Sheriff or his

Deputies personally, shall be paid for by the Sheriff and the amount thereof shall be reported by the Sheriff, on the report above mentioned, in the same manner as herein provided for other expenses.

(b) Each officer named in this Act, where he receives a salary as compensation for his services, shall be empowered and permitted to purchase and have charged to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on officials' bonds, premium on fire, burglary, theft, robbery insurance protecting public funds and including the cost of surety bonds for his Deputies, such expenses to be passed on, pre-determined and allowed in kind and amounts, as nearly as possible, by the Commissioners' Court once each month for the ensuing month, upon the application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the County Auditor, if any, otherwise the County Treasurer, only as to whether funds are available for payment of such expenses. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor purchase equipment for a bureau of criminal identification, such as cameras, finger print cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment in keeping with the system in use by the Department of Public Safety of this State, or the United States Department of Justice and/or Bureau of Criminal Identification.

Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the County Auditor, if any, otherwise by the Commissioners' Court. Each officer shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices and requisitions shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said County Auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers' Salary Fund unless otherwise provided herein.

The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of such officer, stating the necessity therefor, allow one or more automobiles to be used by the Sheriff in the discharge of official business, which, if purchased by the county shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be reported and paid in the same manner as herein provided for other expenses.

Where the automobile or automobiles are owned by the Sheriff or his Deputies, they shall be allowed four (4¢) cents for each mile traveled in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation and operation of such automobile. Such mileage shall be reported and paid in the same manner prescribed for other allowable expenses under the provisions of this

section. No automobile shall be allowed for any Deputy Sheriff except those regularly employed in outside work. It shall be the duty of the County Auditor, if any, otherwise the Commissioners' Court, to check the speedometer reading of each of said automobiles, owned by the county once each month and to keep a public record thereof; no automobile owned by the county shall be used for any private purpose. [As amended Acts 1937, 45th Leg., p. 1340, ch. 498, § 1.]

(c) Provided that in all counties of this State having a population of not less than thirty thousand, nine hundred (30,900) and not more than thirty thousand, nine hundred and fifty (30,950) according to the last preceding Federal Census wherein there is no District Attorney and the Criminal District Attorney performing the duties of a District Attorney, such Criminal District Attorney performing the duties of a District Attorney shall be empowered and permitted to incur reasonable and necessary expenses in investigating crime and accumulating evidence in criminal cases; and shall be allowed Three (3) Cents a mile for each mile traveled by him in an automobile furnished by him in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation, and operation of such automobile; such expenses shall be reported to the Commissioners Court of each county affected by this Act as other expenses are reported and shall be paid by said Commissioners Court as such other expenses are paid. [As added Acts 1937, 45th Leg., 1st C.S., p. 1817, ch. 37, § 1.]

Acts 1937, 45th Leg., 1st C.S., p. 1817, ch. 37, effective July 7, 1937.

Section 2 of Act 1937, 45th Leg., 1st C.S., p. 1817, ch. 37, provided that: "The provisions of this Act shall be cumulative of all laws, not in conflict herewith." Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Acts 1937, 45th Leg., p. 1340, ch. 498, effective June 11, 1937.

Section 2 of Acts 1937, 45th Leg., p. 1340, ch. 498, of 1937 declared an emergency and provided that the act should take effect from and after its passage.

Senate concurrent resolution No. 40 filed in the Department of State May 17, 1935 without the Governor's signature, omitting the whereas provisions, reads as follows:

"Resolved, by the Senate of the Forty-fourth Legislature of the State of Texas, the House of Representatives concurring, that it was the intention of the Legislature that the Sheriffs of this State be permitted to charge as reasonable expenses for the operation of their automobiles a maximum sum of Fifty (\$50.00) Dollars per month per car; and be it further

"Resolved, That the Commissioners' Court and County Auditors and other County and State officials are hereby requested and instructed to so construe said Statute and to allow the Sheriffs of this State a maximum sum of Fifty (\$50.00) Dollars, per car per month, for the operating expenses of all such cars, as are reasonably necessary to a proper discharge of the duties of the Sheriffs of this State."

#### Art. 3901—1. Maximum fees of collectors—assessors in counties of 13,350 to 13,440 population

Section 1. In all counties having a population of not less than thirteen thousand, three hundred and fifty (13,350) and not more than thirteen thousand, four hundred and forty (13,440), according to the most recent available Federal Census and each available Federal Census thereafter, the Assessors-Collectors of Taxes of such counties shall be entitled to receive the fees of office earned by their offices in accordance with the provisions of the Maximum Fee Bill; provided, however, that in such counties the maximum amount of fees which may be retained by such officer, including all excess fees, shall be Four Thousand Dollars (\$4,000), provided such office earns sufficient fees to pay this amount.

Sec. 2. Each Assessor-Collector of Taxes earning fees in excess of Four Thousand Dollars (\$4,000) shall make disposition of such excess in accordance with the provisions of the Maximum Fee Bill. All Assessors-Collectors in counties hereby affected shall be entitled to deputies and

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assistants in the manner authorized in the Maximum Fee Bill. [Acts 1937, 45th Leg., 1st C.S., p. 1826, ch. 45.]

Effective July 7, 1937.

Section 3 of Act 1937, cited to the text, amended art. 1645.

Section 4 provided that: "If any section, sentence or any part whatever of this Act should be held to be unconstitutional or invalid, the same shall not affect the remaining portion of this Act, and it is hereby declared that the Legislature would have passed that part which is constitutional and valid." Section 5 repeals all conflicting laws and parts of laws. Section 6 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the maximum amount of fees that may be retained by the Assessor-Collector of Taxes in all counties having a population of not less than thirteen thousand, three hundred and fifty (13,350) and not more than thirteen

thousand, four hundred and forty (13,440), according to the most recent available Federal Census and each available Federal Census thereafter; providing for disposition of excess fees and for deputies and assistants in accordance with the provisions of the Maximum Fee Bill; amending Article 1645, Title 34, of the Revised Civil Statutes of the State of Texas of 1925, as amended by Chapter 35, General and Special Laws passed at the First Called Session of the Fortieth Legislature, as amended by Chapter 28, General and Special Laws passed at the First Called Session of the Forty-first Legislature, as amended by Chapter 15, General and Special Laws passed at the Second Called Session of the Forty-second Legislature; providing a saving clause; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1826, ch. 45.]

**Art. 3902. 3903 Deputies, assistants or clerks; appointment; compensation and salaries**

1-a. In counties having a population of twenty-five thousand (25,000) inhabitants or less, according to the last preceding Federal Census, and whose tax values exceed One Hundred Million Dollars (\$100,000,000), according to the last approved tax rolls, the first assistant to the Tax Assessor and Collector and the first assistant to the County Clerk may each receive an annual salary of not to exceed Three Thousand Dollars (\$3,000) per annum, and the cashier to the Tax Assessor and Collector and the County Clerk may each receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum. The Tax Assessor and Collector shall designate in addition to the first assistant and cashier, two heads of departments, one to be in charge of assessing and one to be in charge of collecting in such counties, who may receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and any additional assistants, deputies or clerks to the Tax Assessor and Collector or the County Clerk may receive an annual salary of not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. Added Acts 1939, 46th Leg., Spec.L., p. 736, § 1.

Effective April 25, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Another subsection 1-a was added to this article by Acts 1939, 56th Leg., Spec.L., p. 740, § 1, see post.

1a. In counties having a population of not less than nineteen thousand, eight hundred and fifty (19,850) and not more than nineteen thousand, eight hundred and ninety-five (19,895) inhabitants, according to the last preceding Federal Census, the Commissioners Court may approve the appointment of heads of departments, when necessary, and when additional allowance for salary is deemed necessary or justified by the Commissioners Court of such counties for heads of departments or chief deputies, a sum not to exceed Two Hundred Dollars (\$200) per annum may be allowed, in addition to the regular salary for such

heads of departments or chief deputies, when such officers shall have previously served the county for not less than two (2) continuous years. As added Acts 1939, 46th Leg., Spec.L., p. 740, § 1.

Effective June 5, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Another subsection 1-a was added by Acts 1939, 46th Leg., Spec.L., p. 736, § 1, see ante.

2. In counties having a population of twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, first assistant or chief deputy not to exceed Two Thousand Dollars (\$2,000) per annum; other assistants, deputies, or clerks not to exceed Seventeen Hundred Dollars (\$1700) per annum each. Provided, however, that in all counties containing a population of not less than thirty thousand (30,000) nor more than thirty-seven thousand, five hundred (37,500), according to the last preceding Federal Census, and having a valuation in excess of Eighty-five Million Dollars (\$85,000,000), and in all counties having an assessed valuation of not less than Twenty-seven Million, Five Hundred Thousand Dollars (\$27,500,000) nor more than Twenty-seven Million, Seven Hundred Thousand Dollars (\$27,700,000), according to the last approved tax roll, and containing a population of not less than fifty-three thousand, nine hundred (53,900) nor more than fifty-four thousand (54,000), according to the last preceding Federal Census, four (4) deputies in the Tax Collector and Assessor's office may receive not to exceed Twenty-four Hundred Dollars (\$2400) per annum each, the remainder of the deputies in said office shall receive not exceeding Seventeen Hundred Dollars (\$1700) per annum each. As amended, Acts 1937, 45th Leg., p. 1330, ch. 493, § 1.

Effective June 9, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided

that the act should take effect from and after its passage.

3a. In counties having a population of not less than forty-eight thousand nine hundred (48,900) and not more than forty-nine thousand (49,000) inhabitants, according to the preceding Federal Census, the County Judge may employ one person as office assistant, bookkeeper and stenographer at a salary to be fixed by the County Judge not to exceed Eighteen Hundred (\$1,800.00) Dollars per annum, in twelve equal monthly installments out of the general fund of the county. [As added Acts 1937, 45th Leg., 2nd C.S., p. 1870, ch. 6, § 1.]

Effective Nov. 3, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

4a. In counties having a population of sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, according to the preceding Federal Census and containing a city of not less than fifty-two thousand (52,000) inhabitants according to the preceding Federal Census, heads of departments may be allowed by the Commissioners Court, when in their judgment such allowance is justified, the sum of Two Hundred Dollars (\$200) per annum in addition to the amount hereinbefore authorized to either First Assistant or Chief Deputy, or other Assistants, Deputies or Clerks, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two (2) continuous years; provided no heads of departments shall be created except where the persons ought to be appointed shall be in actual charge of some department, with Deputies or Assistants, under his supervision, or a department ap-



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proved by the Court, and only in offices capable of a bona fide subdivision into departments. As added Acts 1937, 45th Leg., p. 581, ch. 290, § 1.

Acts 1937, 45th Leg., p. 581, ch. 290, became law without Governor's signature and was filed May 6, 1937. Section 2 of Act of 1937 is the emergency section.

7. That in all counties in this State having a population of not less than thirty-nine thousand, four hundred and ninety-six (39,496) and not more than forty thousand (40,000), according to the last preceding Federal Census, first assistant county attorneys shall be entitled to a salary of not less than Sixteen Hundred and Twenty Dollars (\$1620) per annum nor more than Nineteen Hundred and Twenty Dollars (\$1920) per annum, to be set by the Commissioners Court of the County. The amount of the salary shall be paid on the first of each month and in twelve (12) equal monthly payments. [As added Acts 1937, 45th Leg., p. 301, ch. 157, § 1.]

Effective April 14, 1937.

Section 2 of this Act declared an emergency making the act effective on and after its passage.

Acts 1937, 45th Leg., p. 647, ch. 317 which purports to amend article 3902, Rev.St. 1925, as amended by Acts 1935, 44th Leg. 2nd C.S., p. 1762, ch. 465 is set out in article 3912e, section 16.

Art. 3903c. Assistant to County Judge in counties of 48,600 to 49,000; salary

Section 1. That the County Judge in all counties in Texas having a population of not less than forty-eight thousand, six hundred (48,600) nor more than forty-nine thousand (49,000) according to the last preceding or any future Federal Census be empowered to appoint an Assistant.

Sec. 2. The salary of such Assistant shall be in an amount not to exceed Eighteen Hundred Dollars (\$1800) per annum and shall be subject to the consent and approval of the Commissioners Court of such counties. Acts 1939, 46th Leg., Spec.L., p. 750.

Effective July 8, 1939.

Section 3 of the Act repeals all conflicting laws and parts of laws.

Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to create the appointive office of Assistant to the County Judge in certain counties; and to provide an equitable and sufficient salary therefor; repealing all laws in conflict; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 750.

[Art. 3912e. Method of compensation of district and certain designated county and precinct officers]

[Additional fees of precinct officers]

Sec. 2a. In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, wherein the precinct officers are compensated on a salary basis under the provisions of this Act, such precinct officers shall receive, in addition to the salary fixed by the Commissioners Court, all fees, commissions, or payments for performing marriage ceremonies and for acting as registrar for the Board of Vital Statistics, and for acting as ex-officio notary public. [Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 2-a, as added Acts 1937, 45th Leg., p. 351, ch. 171, § 1.]

Acts 1937, 45th Leg., p. 351, ch. 171, § 1, became a law without Governor's signature and was filed April 16, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

[Commissioners' Court to fix salaries of certain officers]

Sec. 13.

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(c). The Commissioners Courts of the respective counties of Texas having a population of more than forty-six thousand, one hundred (46,100) and less than forty-six thousand, two hundred (46,200), according to the last preceding Federal Census, are hereby authorized to fix the salary of the County Treasurer of their particular county at any sum not less than Fifty Dollars (\$50) per month. In the determination of such salary the Court will consider the fees received by such office during the preceding fiscal year; the expenses of that office during the same period, and the relative duties incumbent on such officer; and shall in their discretion affix to such office such compensation as they deem just and necessary for the services rendered, within the limits hereinbefore provided. Added Acts 1939, 46th Leg., Spec.L., p. 608, § 1.

Effective May 12, 1939.

Section 2 of the Act of 1939 provided that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict; and this Act shall be interpreted as an express modifi-

cation of Article 3912e, Section 13, Revised Civil Statutes of Texas of 1925, to the extent hereinbefore provided. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

[Fees continued until otherwise determined in counties between 15,140 and 15,160 population; additional allowance]

Sec. 16. In counties having a population of not less than fifteen thousand one hundred and forty (15,140) and not more than fifteen thousand one hundred and sixty (15,160) inhabitants according to the last preceding Federal Census, all county officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise, in accordance with the provisions of Section 2 of this Act. Provided that in counties having a population of not less than fifteen thousand one hundred and forty (15,140) and not more than fifteen thousand one hundred and sixty (15,160) inhabitants according to the last preceding Federal Census heads of departments may be allowed by the Commissioners' Court, when such allowance is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the regular salary when such heads of departments so to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years. [As amended Acts 1937, 45th Leg., p. 647, ch. 317, § 1.]

Amendment of 1937 effective 90 days after May 22, 1937, date of adjournment. Section 2 of the amendatory act of 1937

declared an emergency and provided that the act should take effect from and after its passage.

[Provision applicable to counties in excess of 190,000]

Sec. 19.

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(c) The term "Precinct Officers" as used in this section means Justices of the Peace and Constables.

Such Precinct Officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise in accordance with the provisions of this section.

The annual fees that may be retained by any such Precinct Officer shall be Four Thousand (\$4,000.00) Dollars each; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, such Precinct Officers may retain not to exceed Four Thousand, Five Hundred (\$4,500.00) Dollars each.

All fees and commissions earned by such official shall be applied first to the payment of his Deputies, authorized expenses of his office, and to make up the maximum provided for such officers.

All fees and commissions over and above the amount necessary to pay authorized expenses and Deputies' salaries, and to make up the maximum compensation above provided for, shall be deemed excess fees, and all excess fees not permitted to be retained shall be paid into the General Fund of the county.

Delinquent fees may be used to defray the salaries of Deputies if current fees are insufficient for that purpose; and may be used also to make up the maximum compensation, exclusive of excess fees, allowed to such officers for the fiscal year within which such fees were earned. Delinquent fees collected in excess of the amount above provided for shall be paid by the Officer collecting the same into the General Fund of the county.

Precinct Officers, as defined in this section, shall be compensated after an order duly enacted by the Commissioners' Court as herein provided, on an annual salary basis from said Officer's Salary Fund; such salaries shall be fixed by the Commissioners' Court at a reasonable sum not to exceed Four Thousand (\$4,000.00) Dollars each; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, such salaries shall be fixed by the Commissioners' Court at a reasonable sum not to exceed Four Thousand, Five Hundred (\$4,500.00) Dollars each; provided further that in such counties in which the Commissioners' Court determines to place Justices of the Peace and Constables on a salary basis, said Commissioners' Court shall not be required to place said salaries in all precincts within the county at equal amounts, but said Commissioners' Court shall have discretion to determine the amount of salary to be paid to each of said Justices of the Peace and to each of said Constables in the several precincts in said counties within the limitations hereinabove set out. In counties where the Commissioners' Court determine to place the Justices of the Peace on a salary basis the Justice of the Peace shall receive in addition thereto all fees, commissions, or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex-officio Notary Public. [As amended Acts 1937, 45th Leg., p. 32, ch. 26, § 1.]

Effective March 5, 1937.

The title and sections 1, 1a, 1b, of the amendatory act of 1937, 45th Leg., p. 32, ch. 26, amended Acts 1935, 44th Leg., First Called Session, instead of Second Called Session.

Section 2 of the amendatory act of 1937

repeals all conflicting laws and parts of laws to the extent of such conflict only. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

See, also, art. 3912e-2 as to salaries in counties of over 355,000 population.

(d) The County Judge, Sheriff, District Attorney or Criminal District Attorney, as the case may be, District Clerk, County Clerk, and Assessor and Collector of taxes shall receive a salary of Six Thousand, Five Hundred (\$6,500.00) Dollars per annum from the Officer's Salary Fund herein provided for; provided that in counties having a population of more than 355,000 inhabitants, according to the last preceding or any future Federal Census, the said officers shall receive a salary of Seven Thousand, Four Hundred (\$7,400.00) Dollars per annum from the said Officer's Salary Fund. The compensation herein fixed for the Sheriff or Constable shall be exclusive of any reward received for the apprehension of criminal fugitives from justice and rewards received for the recovery of stolen property. The County Commissioners in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future

Federal Census, shall each receive a salary of Four Thousand Eight Hundred (\$4,800.00) Dollars per annum, and said salaries shall be paid in equal monthly installments, three-fourths ( $\frac{3}{4}$ ) out of the Road and Bridge Fund and one-fourth ( $\frac{1}{4}$ ) out of the General Fund of the county. The Judge of the County Court at Law of Harris County, Texas and the Judge of the County Court at Law No. 2 of Harris County, Texas each shall receive a salary of Six Thousand (\$6,000.00) Dollars per annum to be paid out of the County Treasury by the Commissioners' Court in equal monthly installments. As amended Acts 1937, 45th Leg., p. 32, ch. 26, § 1-a.

Effective March 5, 1937.

See, also, art. 3912e—2 as to salaries in counties in excess of 355,000 population.

(e) The Commissioners' Court of each county shall determine annually the salary to be paid to the County Treasurer at a reasonable sum not to exceed Three Thousand, Six Hundred (\$3,600.00) Dollars per annum; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, the salary to be paid to the County Treasurer shall not exceed Three Thousand, Nine Hundred (\$3,900.00) Dollars per annum. Said Treasurer shall be allowed to appoint one Assistant at a reasonable salary not to exceed One Thousand, Eight Hundred (\$1,800.00) Dollars per annum; and said Court may allow one additional Assistant upon adequate proof of necessity at a reasonable salary not to exceed One Thousand, Five Hundred (\$1,500.00) Dollars per annum. Said Assistants shall be appointed by the Treasurer and shall take the usual oath of office and, in addition thereto, shall give such surety bond as may be required by the County Treasurer or by the Commissioners' Court. Said Assistants shall have authority to do and perform in the name of the Treasurer such acts of a clerical or ministerial character as may be required of them by the County Treasurer. The County Treasurer may designate, subject to the approval of the Commissioners' Court, a named person to act for him and in his stead when he shall be absent, unavoidably detained or incapacitated. The particulars justifying such appointment shall be placed before the Commissioners' Court and such Court may require any proof in connection therewith desired. Upon approval of the Court of the appointment of the person so designated, and the recording of such appointment in the minutes of the Court, thereupon such person may act for such Treasurer during such period of absence, detention or incapacity; provided, however, that such appointment shall not become effective until such named person shall have given a surety bond in favor of the county and the County Treasurer as their interests may appear and in such amounts as the Commissioners' Court may require. As amended Acts 1937, 45th Leg., p. 32, ch. 26, § 1-b.

Effective March 5, 1937.

See, also, art. 3912e—2 as to salaries in counties in excess of 355,000 population.

(f) The district attorney or criminal district attorney shall be authorized to appoint nine (9) assistants and fix their salaries at a rate not to exceed the following amounts: two (2) of said assistants, Four Thousand, Five Hundred Dollars (\$4,500) per annum each; two (2) of said assistants, Four Thousand, Two Hundred Dollars (\$4,200) per annum each; one (1) of said assistants, Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) of said assistants, Three Thousand Dollars (\$3,000) per annum; and three (3) of said assistants, Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum each. He may employ

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two (2) court reporters and fix their salaries at not to exceed Two Thousand, Two Hundred and Eighty Dollars (\$2,280) per annum each. He may employ one (1) combination stenographer and accountant and fix his salary at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum. He may employ one (1) stenographer and fix his salary at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. He may employ one (1) chief civil clerk and fix his salary at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum. He may employ two (2) abstracters and fix their salaries as follows: one (1) of said abstracters at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum, and the other abstracter at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. All such salaries above mentioned shall be payable from the Officers Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the general fund of the county to the Officers Salary Fund.

In all counties in this State containing a population of not less than two hundred and ninety thousand (290,000) nor more than three hundred and twenty thousand (320,000) inhabitants, according to the last preceding Federal Census, the district attorney or criminal district attorney shall be authorized to employ two (2) court reporters and fix their salaries as follows: one (1) of said court reporters at a salary not to exceed Three Thousand Dollars (\$3,000) per annum, and one (1) of said court reporters at a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum.

Should a district or criminal district attorney be of the opinion that the number of assistants, stenographers, investigators, or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of his office, with the advice and consent of the Commissioners Court he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: one (1) additional assistant to receive a salary not to exceed Four Thousand, Two Hundred and Fifty Dollars (\$4,250) per annum; one (1) additional assistant or employee to receive a salary not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand Dollars (\$3,000) per annum; and two (2) additional assistants to receive a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ one (1) additional court reporter and fix his salary at a rate not to exceed Two Thousand, One Hundred and Sixty Dollars (\$2,160) per annum. He may employ one (1) stenographer and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one (1) civil clerk and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one (1) information clerk and fix his salary at a rate not to exceed Nine Hundred Dollars (\$900) per annum, but such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of the county in which such appointments are made, these salaries being payable from the Officers Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the general fund of the county to the Officers Salary Fund. In addition to the salary herein provided for investigators for district attorneys and criminal district attorneys, each of such investigators shall be allowed a sum not to exceed Fifty Dollars (\$50) per month for repair and maintenance expense of an automobile used

by said investigator in the investigation of crime, said allowances to be paid monthly by such county by warrant drawn upon said Officers Salary Fund upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the district attorney before being paid. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1996, ch. 68, § 1.]

Effective Nov. 3, 1937.

Section 2 of the amendatory act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

(h)

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Provided, that in counties having a population of three hundred and fifty-five thousand (355,000) or more, according to the last preceding Federal Census, whenever any district or county officer, or precinct officer when such precinct officer is compensated on a salary basis, with the exception of district attorneys and criminal district attorneys, shall require the services of deputies, assistants, and employees, in the performance of his duties, he shall apply in writing to the Commissioners Court of his county for authority to appoint such deputies, assistants, and employees, such written application to be sworn to and to set forth the number needed, the positions to be filled, the duties to be performed, and the amount of compensation to be paid. Each such application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by the office of the officer so applying during the fiscal year and the probable disbursements to be made by such office during such fiscal year, which shall include all salaries and expenses of such office, and said Court shall make its order authorizing the appointment of such deputies, assistants, and employees, and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed, as in the discretion of said Court may seem proper; provided that in no case shall the Commissioners Court, or any member thereof, attempt to influence the appointment of any person as a deputy, assistant, or employee in any office. Upon the entry of such order the officer applying for such deputies, assistants, and employees, shall be authorized to appoint them, provided that the compensation to be paid them shall not exceed the maximum amount hereinafter set out. The maximum compensation which may be allowed to the deputies, assistants, and employees of the officers hereby affected for their services shall be as follows:

First Assistant or Chief Deputy not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, one Assistant Chief Deputy not to exceed Three Thousand Dollars (\$3,000) per annum; other assistants, deputies, and employees not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum each; provided further that the First Assistant or Chief Deputy in county and district offices affected hereby shall receive not less than Three Thousand Dollars (\$3,000) per annum; provided further that heads of departments may each be allowed by the Commissioners Court, when necessary in the judgment of such Court, to receive respective salaries not to exceed the rate of Two Thousand, Five Hundred Dollars (\$2,500) per annum, when such heads of departments sought to be appointed shall have previously served the county or district by which they are employed for not less than two (2) continuous years, but no head of a department shall be created except where the person sought to be appointed is to be in actual charge of the department with deputies or assistants under his supervision, and such heads of departments shall only be appointed in offices capable of a bona fide

subdivision into departments; provided further, that in all counties affected by this Act, having more than one District Court or Criminal District Court, the deputies or assistants of the District Clerk, who are regularly assigned to serve in such Courts as clerks, shall be considered as heads of departments within the meaning of this Act, and Sheriffs' deputies regularly assigned to and serving in such District Courts or Criminal District Courts, not to exceed one deputy to each such Court, shall be paid a salary of not less than Two Thousand, One Hundred Dollars (\$2,100) per annum each. No payment shall be made to any deputy, assistant, or employee for any service performed prior to the authorization of his appointment and until he shall have subscribed to the Constitutional Oath of Office and such appointment and Oath have been filed with the County Clerk and County Auditor for record. The amounts allowed to be paid to deputies, assistants, and employees shall be paid only after rendition of service out of said Officers' Salary Fund or General Fund as provided for in this Act. Added Acts 1939, 46th Leg., Spec. L., p. 744, § 1.

Effective April 26, 1939.

Section 2 of the amendatory Act of 1939 repeals all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the Act should take effect from and after its passage.

(h-2): In any county of this State with a population of two hundred fifty thousand (250,000) inhabitants and over and less than three hundred twenty-five thousand (325,000) inhabitants, according to the last preceding Federal Census, the District Clerk may make written application to the District Judges of said county for the appointment of assistants and/or deputies and the salaries to be paid same, setting forth the number of assistants and/or deputies sought to be appointed and the salary to be paid each, such salaries to be not more than allowed by law in Senate Bill 5, Acts of the Forty-fourth Legislature, Second Called Session, and amendments thereto. Said application shall be accompanied by a statement showing the probable receipts and disbursements of said office, and shall be presented to the District Judges, who shall then carefully consider same; and, if, after such consideration, a majority of the District Judges shall approve the appointments sought to be made, and shall also approve the salary to be paid each, they shall certify said list to the Commissioners' Court of said county; and said application and the order of the District Judges thereon shall be recorded in the minutes of the District Court.

The Commissioners' Court shall thereupon order the amount approved to be paid from the General Fund, officers' salary fund, or any other fund of the county, as herein provided, upon the performance of the services required, and said Commissioners' Court shall appropriate adequate funds for that purpose. All assistants to the District Clerk shall be paid from the General Fund of the county or the Officers' Salary Fund, as per the order of the Commissioners' Court, except as herein provided; and be it further provided that the Commissioners' Court may authorize that the court clerks, the index clerk, and the clerk handling the jury in each such county can be paid either from the General Fund or the Jury Fund of said county.

The deputies appointed by the District Clerk shall be authorized to discharge such duties as may be assigned to them by the District Clerk and provided for by law, and all of said assistants shall take the oath of office for faithful performance of duty. The District Clerk shall have the right to discontinue the services of any assistants employed in accordance with the provisions of this Article, but no assistant shall be employed except in the manner herein provided. In like manner, the

Judges of the District Court may authorize the appointment of additional assistants when, in the judgment of the District Clerk, a necessity exists therefor. Added Acts 1939, 46th Leg., Spec.L., p. 742, § 1.

Effective June 5, 1939.

Section 2 of the amendatory Act of 1939 repeals all conflicting laws and parts of laws; section 3 provided that if any part of section of this Act shall be held uncon-

stitutional, it shall not in anywise affect the remaining part of the Act.

Section 4 declared an emergency and provided that the act should take effect from and after its passage.

(l). Each district, county, and precinct officer receiving an annual salary as compensation shall be entitled, subject to the provisions of this Section, to issue warrants against the salary fund created for his office in payment of the services of deputies, assistants, clerks, stenographers, and investigators, for such amounts as said employees may be entitled to receive for services performed under their authorizations of employment. And such officer shall be entitled to file claims for and issue warrants in payment of all actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, traveling expenses, premiums on deputies' bonds, and other necessary expenses. If such expenses be incurred in connection with any particular case, such claim shall state such case. All such claims shall be subject to the audit of the county auditor; and if it appears that any item of such expense was not incurred by such officer, or such item was not a necessary expense of office, or such claim is incorrect or unlawful, such item shall be by such auditor rejected, in which case the correctness, legality, or necessity of such item may be adjudicated in any Court of competent jurisdiction. Provided, the Assessor and Collector of Taxes shall be authorized in like manner annually to incur and pay for insurance premiums in a reasonable sum for policies to carry insurance against loss of funds by fire, burglary, or theft.

At the close of each month of the tenure of his office, each officer named herein shall make as a part of the report required by Subsection (o) of this Section an itemized and sworn statement of all expense claims paid during said month. And said report shall give the name, position, and amount paid to each authorized employee of such officer. Such deputies, assistants, clerks, or other employees as well as expenses shall be paid from the Officers' Salary Fund in cases in which the officer is on a salary basis, and from fees earned and collected by such officer in all cases in which the officer is compensated on a basis of fees earned by him.

The Commissioners Court may allow, upon the written and sworn application of the sheriff showing the necessity therefor, one or more automobiles to be used by the sheriff or his deputies in the discharge of his official duties, which, if purchased by the county, shall be bought in the manner prescribed by law for the purchase of supplies, and shall be paid for out of the Officers' Salary Fund, and said automobiles shall be and remain the property of the county. The expense of operating and maintaining said automobile shall be paid in the manner and subject to the provisions herein provided for other expense items. The Commissioners Court by an order entered of record may make provision for payment of depreciation upon automobiles owned personally by the sheriff or his deputies.

The Commissioners Court may, upon the written and sworn application of the District Attorney or Criminal District Attorney stating the necessity therefor, allow one or more automobiles to be used by him in the discharge of his official duties, which if purchased shall be bought by the county in the manner prescribed by law for the purchase of supplies and paid for out of the Officers' Salary Fund, and they shall be and remain the property of the county. The amount to be expended for the purchase of



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

an automobile or automobiles shall not exceed the sum of One Thousand, Two Hundred Dollars (\$1,200) for the first year, and shall not exceed the sum of Five Hundred Dollars (\$500) for any year thereafter. The expense of the maintenance and operation of such automobile or automobiles as may be allowed shall be paid for by the District Attorney or the Criminal District Attorney from the Officers' Salary Fund, and the amount thereof shall be reported in detail by the District Attorney or the Criminal District Attorney on his monthly report, as is required by this Section in reporting expenses incurred by him in the conduct of his office. Such expense account for the maintenance and operation of such automobile or automobiles shall be subject to audit as hereinabove provided. [As amended Acts 1937, 45th Leg., 1st C.S., p. 1801, ch. 26, § 1.]

Effective July 6, 1937.

the act should take effect from and after its passage.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

**Art. 3912e—1. Compensation of designated district, county, and precinct officers in counties of 300,000**

The provisions of this Section shall apply to and control in each county in the State of Texas having a population of three hundred thousand (300,000) inhabitants or more and less than three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding Federal Census.

(a) The County Judge, Sheriff, District Attorney, District Clerk, County Clerk and the Assessor and Collector of Taxes of such Counties shall each receive a salary of Seventy-four Hundred Dollars (\$7400) per annum. The County Auditor of such Counties shall receive a salary of Sixty-five Hundred Dollars (\$6500) per annum, in lieu of any and all compensation now provided by law; provided that any salary or compensation now provided by law to be paid such County Auditors out of any special funds, including compensation for services rendered navigation, levee, drainage or road districts, shall be charged and collected, but shall be paid into the General Fund of such counties. The County Treasurer of such counties shall receive a salary of Thirty-nine Hundred Dollars (\$3900) per annum. The Judges of the County Courts at Law and the County Criminal Courts of such counties shall each receive a salary of Six Thousand Dollars (\$6,000) per annum. All of such salaries enumerated in this subsection shall be paid out of the General Fund of such counties.

(b) The County Commissioners of such counties shall each receive a salary of Fifty-five Hundred Dollars (\$5500) per annum and such salaries shall be out of the Road and Bridge Funds of such counties.

(c) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees and/or salary of Forty-five Hundred Dollars (\$4500) each, provided however, that all fees and commissions whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office and to make up the maximum compensation provided for in this subsection. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office. Acts 1937, 45th Leg., p. 151, ch. 81, § 1.

Effective March 31, 1937.

Section 3 of this Act repeals all conflicting laws and parts of laws to the extent of such conflict only. Section 4 of this Act declared an emergency and pro-

vided that the Act should take effect from and after its passage.

Title of Act:

An Act fixing the compensation of certain designated District, Count'r and Pre-

inct Officers in counties having a population in excess of three hundred thousand (300,000) inhabitants according to the last preceding or any future Federal Census; providing the method and means by which said officers shall be compensated; providing for appointment by and compensation of assistants to and employes of the District Attorney or Criminal District At-

torney in counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding or any future Federal Census; repealing all laws or parts of laws in conflict herewith to the extent of such conflict only; and declaring an emergency. [Acts 1937, 45th Leg., p. 151, ch. 81.]

**Art. 3912e—2. Compensation of certain district, county, and precinct officers in counties of 355,000; appointment of assistants to district attorneys**

Provisions of this Section shall apply to and control in each county in the State of Texas having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding or any future Federal Census.

(a) The term "Precinct Officers" as used in this section means Justices of the Peace and Constables.

Precinct Officers in such counties shall be compensated for their services on a fee basis unless the Commissioners Court shall have determined otherwise as provided by law.

The annual fees that may be retained by any such Precinct Officer shall be Four Thousand, Five Hundred Dollars (\$4,500) each.

All fees and commissions earned by such official shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum provided for such officers.

All fees and commissions over and above the amount necessary to pay authorized expenses and Deputies' salaries, and to make up the maximum compensation above provided for, shall be deemed excess fees, and all excess fees not permitted to be retained shall be paid into the General Fund of the county.

Delinquent fees may be used to defray the salaries of Deputies if current fees are insufficient for that purpose; and may be used also to make up the maximum compensation, exclusive of excess fees, allowed to such officers for the fiscal year within which such fees were earned. Delinquent fees collected in excess of the amount above provided for shall be paid by the officer collecting the same into the General Fund of the county.

Precinct Officers, as defined in this Section, shall be compensated after an order duly enacted by the Commissioners Court, on an annual salary basis from said Officers' Salary Fund or the General Fund, as the case may be; such salaries shall be fixed by the Commissioners Court at a reasonable sum not to exceed Four Thousand, Five Hundred Dollars (\$4,500) each; provided further that in such counties in which the Commissioners Court determines to place Justices of the Peace and Constables on a salary basis, said Commissioners Court shall not be required to place said salaries in all precincts within the county at equal amounts, but said Commissioners Court shall have discretion to determine the amount of salary to be paid to each of said Justices of the Peace and to each of said Constables in the several precincts in said counties within the limitations hereinabove set out. In counties where the Commissioners Court determines to place the Justices of the Peace on a salary basis the Justice of the Peace shall receive in addition thereto all fees, commissions or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex-officio Notary Public.

(b) The County Judge, Sheriff, District Attorney or Criminal District Attorney, as the case may be, District Clerk, County Clerk, and Assessor and Collector of Taxes in such counties shall receive a salary of Seven Thousand, Four Hundred Dollars (\$7,400) per annum from the Officers' Salary Fund or General Fund, as the case may be. The compensation herein fixed for the Sheriff or Constable shall be exclusive of any reward received for the apprehension of criminal fugitives from justice and rewards received for the recovery of stolen property.

(c) The County Commissioners in such counties shall each receive a salary of Four Thousand, Eight Hundred Dollars (\$4,800) per annum, and said salaries shall be paid in equal monthly installments, three-fourths (3/4) out of the Road and Bridge Fund and one-fourth (1/4) out of the General Fund of the county.

(d) The Judge of the County Court at Law of Harris County, Texas, and the Judge of the County Court at Law No. 2 of Harris County, Texas, each shall receive a salary of Six Thousand Dollars (\$6,000) per annum to be paid out of the County Treasury by the Commissioners Court in equal monthly installments.

(e) The Commissioners Court of each county in the State of Texas having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding Federal Census shall determine annually the salary to be paid the County Treasurer of each of such counties from county funds for his services to the county at a reasonable sum not to exceed Three Thousand, Nine Hundred Dollars (\$3,900) per annum. Where such Treasurer acts also as Treasurer of any Navigation and Drainage Districts, he shall receive and be entitled to retain such compensation from such districts as is provided by Articles 8221 and 8148, Revised Civil Statutes of Texas, 1925. Said County Treasurer shall be allowed to appoint one assistant at a reasonable salary, not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum, and the Commissioners Court of such county may allow one additional assistant upon adequate proof of necessity therefor at a reasonable salary not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. Said assistants shall be appointed by such County Treasurer and shall take the usual oath of office, and, in addition thereto, shall give such surety bond as may be required by such County Treasurer or by the Commissioners Court of such county. Said assistants shall have authority to do and perform in the name of such County Treasurer such acts of a clerical or ministerial character as may be required of them by such County Treasurer. The County Treasurer of each of such counties may designate, subject to the approval of the Commissioners Court, any named person to act for him and in his stead when he shall be absent from the county, unavoidably detained, or incapacitated. The particulars justifying such appointment shall be placed before the Commissioners Court and such Court may require any desired proof in connection therewith. Upon the approval by the Commissioners Court of the appointment of any such person so designated, and the recording of such appointment in the minutes of the Commissioners Court, thereupon such person may act for such County Treasurer during such periods of absence, detention or incapacity; provided, however, that such appointment shall not become effective until such named person shall have given such additional surety bond, if any, in favor of such county and the County Treasurer thereof as their interests may appear and in such amounts as the Commissioners Court may require. As amended Acts 1939, 46th Leg., Spec. L., p. 607, § 1.

Effective April 20, 1939.

(f) The Criminal District Attorney or District Attorney in such counties shall be authorized to appoint nine (9) assistants and fix their salaries at a rate not to exceed the following amounts: two (2) of said assistants, Four Thousand, Five Hundred Dollars (\$4,500) per annum each; two (2) of said assistants, Four Thousand, Two Hundred Dollars (\$4,200) per annum each; one (1) of said assistants, Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) of said assistants, Three Thousand Dollars (\$3,000) per annum; and three (3) of said assistants, Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum each. He may employ two (2) court reporters and fix their salaries at not to exceed Two Thousand, Two Hundred Eighty Dollars (\$2,280) per annum each. He may employ one (1) stenographer and fix his salary at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. He may employ one (1) chief civil clerk and fix his salary at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum. He may employ three (3) abstracters and fix their salaries as follows: Two (2) of said abstracters at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum each, and the other abstracter at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. All such salaries above mentioned shall be payable from the Officers' Salary Fund or General Fund, as the case may be.

Should such Criminal District Attorney or District Attorney be of the opinion that the number of assistants, stenographers, investigators, or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of his office, with the advice and consent of the Commissioners Court he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: One (1) additional assistant to receive a salary not to exceed Four Thousand, Two Hundred Fifty Dollars (\$4,250) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand Dollars (\$3,000) per annum; and two (2) additional assistants to receive a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ one (1) additional court reporter and fix his salary at a rate not to exceed Two Thousand, One Hundred Sixty Dollars (\$2,160) per annum. He may employ one (1) additional stenographer and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one (1) additional stenographer and fix his salary at a rate not to exceed Eighteen Hundred Dollars (\$1,800) per annum. He may employ one (1) civil clerk and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one information clerk and fix his salary at a rate not to exceed Nine Hundred Dollars (\$900) per annum, but such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of the county in which such appointments are made, these salaries being payable from the Officers' Salary Fund or General Fund, as the case may be. In addition to the salary herein provided for investigators for Criminal District Attorneys or District Attorneys, each of such investigators shall be allowed a sum not to exceed Fifty Dollars (\$50) per month for repair and maintenance expense of an automobile used by said investigator in the investigation of crime, said

allowances to be paid monthly by such county by warrant drawn upon said Officers' Salary Fund or General Fund, as the case may be, upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the District Attorney before being paid.

(g) The County Auditor in such counties shall receive for his services to the county an annual salary of Six Thousand, Five Hundred Dollars (\$6,500) payable from county funds. This shall not be construed nor shall it operate to repeal Article 1672, Revised Civil Statutes of Texas, nor Article 8245, Revised Civil Statutes of Texas, as amended by Acts 1935, 44th Legislature, page 316, Chapter 119, Section 1. [Acts 1937, 45th Leg., p. 151, ch. 81, § 2.]

Effective March 31, 1937.

Section 3 of this Act repeals all conflicting laws and parts of laws to the extent of such conflict only. Emergency section. See note under art. 3912e—1, ante.

Section 2 of the amendatory Act of 1939 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

See, also, art. 3912e, § 19, as to salaries in counties in excess of 355,000 population.

### Art. 3912e—3. Salary of county judge in counties of 12,227 to 12,230

Hereafter, the County Judge in counties having a population of not less than twelve thousand, two hundred and twenty-seven (12,227) and not more than twelve thousand, two hundred and thirty (12,230) according to the last preceding Federal Census of 1930, shall receive an annual salary of Eighteen Hundred Dollars (\$1800) per year, payable in twelve (12) equal monthly installments, and said payments shall be paid out of the funds as now provided by the general laws governing the payment of County Judges in Texas. Acts 1937, 45th Leg., p. 398, ch. 199, § 1.

Effective April 23, 1937.

Section 2 of this Act declared an emergency making the act effective on and after its passage.

#### Title of Act:

An Act fixing the salaries of certain county officials in certain counties with a

population of not less than twelve thousand, two hundred and twenty-seven (12,227) and not more than twelve thousand, two hundred and thirty (12,230) according to the last preceding Federal Census of 1930, and declaring an emergency. [Acts 1937, 45th Leg., p. 398, ch. 199.]

### Art. 3912f—1. Salaries of sheriffs and deputies in counties of 27,235 to 27,300 population; appointment of deputies

Section 1. In all counties of the State of Texas having a population of not less than twenty-seven thousand, two hundred and thirty-five (27,235) and not more than twenty-seven thousand, three hundred (27,300), according to the last preceding Federal Census, in which there are no District Attorneys, the Commissioners Courts of such counties shall, from and after effective date of this Act, compensate the Sheriffs of such counties upon an annual salary basis and shall fix the salaries of such Sheriffs in such counties at not less than Three Thousand, Three Hundred Dollars (\$3,300) and not more than Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in twelve (12) equal monthly installments, out of the Officers Salary Fund of such counties, by warrant drawn upon said fund.

Sec. 2. The Sheriffs of such counties are hereby authorized and empowered to appoint at least one Deputy Sheriff and one special Deputy Sheriff; the powers and duties of the special Deputy Sheriff shall be the same as those of other Deputy Sheriffs and, in addition, his special duty shall be to assist such Sheriffs in all matters arising in and con-

ned with the efficient conduct of said office, including the finger printing, photography work, and investigation work of said office. The Commissioners Courts of such counties shall, from and after effective date of this Act, compensate such Deputy Sheriffs and such special Deputy Sheriffs upon an annual salary basis and shall fix the salary of such special Deputy Sheriff at not exceeding One Thousand, Two Hundred Dollars (\$1,200) per annum, payable in twelve (12) equal monthly installments out of the Officers Salary Fund in such counties by warrant drawn upon said fund by the Commissioners Courts. The compensation of the Deputy Sheriff shall likewise be fixed at an annual salary of not exceeding One Thousand Dollars (\$1,000), payable in twelve (12) equal monthly installments in like manner as provided for the payment of the salaries of special Deputy Sheriffs, hereinabove set out.

Sec. 3. This Act is not intended and shall not be considered or construed as repealing any law or laws now on the Statute books except those in conflict herewith and to the extent of the conflict only, but in other respects shall be construed as being cumulative thereof. Acts 1939, 46th Leg., Spec.L., p. 749.

Effective April 7, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act fixing the compensation of Sheriffs in all counties of the State of Texas having a population of not less than twenty-seven thousand, two hundred and thirty-five (27,235) and not more than twenty-seven thousand, three hundred (27,300), according to the last preceding Federal Census, in which there are no District Attorneys; pro-

viding for the appointment by such Sheriffs of such counties of at least one special Deputy Sheriff and one Deputy Sheriff; prescribing the powers and duties of such deputies; fixing the compensation therefor; providing mode and manner of payment of such salaries; providing that this Act shall be cumulative of all other Acts not in conflict herewith; repealing all laws and parts of laws in conflict to the extent of the conflict only; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 749.

**Art. 3912f—2. Salary of chief deputy in office of Sheriff, Tax Collector and Assessor in counties of 6,000 to 6,200 population**

Section 1. That from and after the effective date of this Act in all counties in this State having a population of not less than six thousand (6,000), and not more than six thousand, two hundred (6,200) according to the last Federal Census, and where the duties of Sheriff, Tax Collector and Assessor are performed by one official, the Commissioners Court is hereby authorized to pay the chief deputies of such officers in such counties a sum not exceeding Two Thousand, One Hundred Dollars (\$2,100) per annum, payable in equal monthly installments.

Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from such funds as the Commissioners Court may designate. Acts 1939, 46th Leg., Spec.L., p. 733.

Effective April 25, 1939.

Section 3 of the Act of 1939 repeals all conflicting laws and parts of laws to the extent of the conflict only; section 4 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act making provisions for salaries of

chief deputy in the office of Sheriff, Tax Collector and Assessor in certain counties; authorizing Commissioners Court to pay salaries; providing mode and manner of paying salaries; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 733.

CHAPTER TWO—ENUMERATION

<p>Art. 3923a. Other services by Clerk of Supreme Court; fees; disposition [New].</p> <p>3935a—1. Expense allowance to justice of peace in counties of 355,000 or more population [New].</p>	<p>Art. 3936b. Fees of justices of the peace and constables in counties of 11,930 to 12,100 [New].</p> <p>3943b. Compensation of treasurer as custodian of road district funds [New].</p>
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Art. 3920. [3844] [2443] [2378] Commissioner of Insurance

The Board of Insurance Commissioners shall charge and receive for the use of the State the following fees:

- ' For filing each declaration or certified copy of charter of an Insurance Company ..... \$25.00
- ' For filing the annual statement of an Insurance Company, or certificate in lieu thereof ..... \$20.00
- ' For certificate of authority and certified copy thereof ..... \$ 1.00
- ' For every copy of any paper filed in the Department of Insurance, for each 100 words, not to exceed ..... \$ .20
- ' For affixing the official seal and certifying to the same ..... \$ 1.00
- ' For valuing policies of Life Insurance, and for each one million of insurance or fraction thereof ..... \$10.00

All fees collected by virtue of this Article shall be deposited in the State Treasury and until September 1, 1939, are hereby appropriated to the use and benefit of the Board of Insurance Commissioners to be used in the payment of salaries and other expenses arising out of and in connection with the examination of Insurance Companies and/or the licensing of Insurance Companies and investigations of violations of the insurance laws of this State.

After August 31, 1939, all fees collected by virtue of this Article shall be deposited in the State Treasury and appropriated to the use and benefit of the Board of Insurance Commissioners to be used in the payment of salaries and other expenses arising out of and in connection with the examination of Insurance Companies and/or the licensing of Insurance Companies and investigations of violations of the Insurance Laws of this State in such manner as provided in the general appropriation bill for the Life Insurance Division and Examining Division and Agents' License Division of the Board of Insurance Commissioners. As amended Acts 1939, 46th Leg., p. 384, § 1.

Effective May 13, 1939. the Act should take effect from and after its passage.  
Section 2 of the amendatory Act of 1939 declared an emergency and provided that

Art. 3923a. Other services by Clerk of Supreme Court; fees; disposition

Section 1. The Clerk of the Supreme Court for every service not otherwise provided by law shall receive such fees as may be allowed by the Court, not to exceed the fees allowed by law for services requiring a like amount of labor.

Sec. 2. Such fees, when collected, shall be accounted for by the Clerk, and paid into the State Treasury as provided by law for other fees collected by him. Acts 1939, 46th Leg., p. 328.

Effective March 16, 1939. Supreme Court shall receive certain fees for services not otherwise provided by law, allowing the Supreme Court to fix such fees, and declaring an emergency. Acts 1939, 46th Leg., p. 328.

Title of Act:  
An act providing that the Clerk of the

**Art. 3933. Sheriffs and constables**

Sheriffs and Constables shall receive the following fees:

Serving each original citation in a civil suit.....	\$1.00
Summoning each witness.....	\$ .50
Levying and returning each writ of attachment or sequestration..	\$2.00
Copy of attachment writ and return for recording.....	\$1.00
Levying each execution.....	\$1.00
Return of execution.....	\$1.00
Serving each writ of garnishment or other process not otherwise provided for.....	\$1.00
Serving each writ of injunction.....	\$1.50
Taking and approving each bond, and returning same to the proper Court when necessary.....	\$1.00
Endorsing the forfeiture of any bond required to be endorsed by him .....	\$ .50
Executing and returning each writ of possession or restitution.....	\$3.00
Posting the advertisements for sale under the execution or any order of sale.....	\$1.00
Posting any other notices required by law and not otherwise provided for .....	\$1.00
Executing a deed to each purchaser of real estate under execution or order of sale.....	\$2.00
Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser..	\$2.00
For each case tried in the District or County Court, a jury fee shall be taxed for the sheriff of.....	\$ .50
For services in designating a homestead.....	\$2.00

For traveling in the service of any civil process, Sheriffs and Constables shall receive seven and one-half (7½) cents for each mile going and coming; if two or more persons are mentioned in the writ, he shall charge for the distance actually and necessarily traveled in the service of same.

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first One Hundred Dollars (\$100) or less, four (4) per cent; for the second One Hundred Dollars (\$100), three (3) per cent; for all sums over Two Hundred Dollars (\$200) and not exceeding One Thousand Dollars (\$1000), two (2) per cent; for all sums over One Thousand Dollars (\$1000) and not exceeding Five Thousand Dollars (\$5000), one (1) per cent; for all sums over Five Thousand Dollars (\$5000), one-half of one per cent.

When the money is collected by the Sheriff or Constable without a sale, one-half of the above rates shall be allowed him.

For every day the Sheriff or his deputy shall attend the District or County Court, he shall receive Four Dollars (\$4) a day to be paid by the county for each day that the Sheriff by himself or a deputy shall attend said Court. As amended Acts 1937, 45th Leg., p. 437, ch. 224, § 1.

Amendment of 1937 became law without Governor's signature April 26, 1937. Section 2 of the amendatory acts of 1937 repeals article 3936 and section 3 declares an emergency making the act effective on and after its passage.

**Art. 3935a—1. Expense allowance to justice of peace in counties of 355,000 or more population**

In all counties containing a population of three hundred and fifty-five thousand (355,000) or more inhabitants, according to the last preceding Federal Census, the Commissioners Court of each of such counties may make a reasonable allowance, not to exceed Fifty Dollars



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

(\$50) a month, for the operation of the automobiles in connection with his official duties, to be paid from the General Fund of each of such counties to each Justice of the Peace, whose courtroom is located in the county courthouse at the county seat of each of such counties, in addition to any and all other expenses now authorized by law to be defrayed by such counties for such Justices of the Peace. Acts 1939, 46th Leg., Spec. L., p. 752, § 1.

Effective April 20, 1939.

Section 2 of the act provided that all laws and parts of laws in conflict herewith be and they are hereby repealed in so far, but only in so far as they relate to and affect the several Justices of the Peace hereby affected. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that in all counties containing a population of three hundred and fifty-five thousand (355,000) or more in-

habitants according to the last preceding Federal Census, the Commissioners Court of each of such counties may make a reasonable allowance, not to exceed Fifty Dollars (\$50) a month, to each Justice of the Peace for the operation of automobiles in connection with their official business, when such Justice of the Peace sits in a court maintained in the courthouse at the county seat of each of such counties; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 752.

**Art. 3936. Repealed by Acts 1937, 45th Leg., p. 437, ch. 224, § 2**

Acts 1937, 45th Leg., p. 437, ch. 224 became law without Governor's signature April 26, 1937.

**Art. 3936b. Fees of justices of the peace and constables in counties of 11,980 to 12,100**

In counties containing not less than eleven thousand, nine hundred and eighty (11,980) inhabitants, and not more than twelve thousand, one hundred (12,100) inhabitants, according to the last preceding Federal Census, the Justices of the Peace and Constables in such counties may retain annual fees to the amount of One Thousand, Five Hundred Dollars (\$1,500); provided that if the current fees of such Justices of the Peace and Constables collected in any year be more than the amount needed to pay the amounts above specified, the same shall be deemed excess fees and shall be disposed of as follows: Said Justices of the Peace and Constables shall retain one-third of such excess fees until such one-third, together with the amount hereinabove specified, amounts to the sum of One Thousand, Eight Hundred Dollars (\$1,800). Acts 1937, 45th Leg., p. 172, ch. 88, § 1.

Effective April 1, 1937.

Section 2 of the Acts of 1937 declared an emergency making the act effective on and after its passage.

**Title of Act:**

An Act fixing the amount of maximum fees that may be retained by Justices of the Peace and Constables in Counties con-

taining not less than eleven thousand, nine hundred and eighty (11,980) inhabitants, and not more than twelve thousand, one hundred (12,100) inhabitants, according to the last preceding Federal Census, and declaring an emergency. [Acts 1937, 45th Leg., p. 172, ch. 88.]

**Art. 3943. 3875, 2469, 2405 Treasurer: commissions limited**

The commissions allowed to any County Treasurer shall not exceed Two Thousand Dollars (\$2,000) annually; provided, that in all counties in which the assessed value of the property of such counties shall be One Hundred Million Dollars (\$100,000,000) or more as shown by the preceding assessment roll, the Treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars (\$2,700) annually; provided that in all counties having a population of not less than seventy-five thousand (75,000) and not more than eighty

thousand (80,000) according to the preceding United States Census, in which counties, road, or road and bridge bonds in the amount of Six Million Dollars (\$6,000,000) or more and flood protection bonds in the amount of One Million Dollars (\$1,000,000) or more have been voted by the people, the Treasurers thereof shall receive as their commissions a sum not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) annually; and shall be allowed an assistant at a salary not to exceed One Thousand, Two Hundred Dollars (\$1,200) annually; provided that in all counties having a population of one hundred and fifty thousand (150,000) or more and less than two hundred and ten thousand (210,000) according to the last United States Census, the Treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars (\$2,700) annually, and shall be allowed an assistant at a salary not to exceed One Thousand Dollars (\$1,000) per annum; provided that in all counties containing a population of not less than forty-two thousand, one hundred (42,100) nor more than forty-two thousand, two hundred and fifty (42,250), according to the last preceding Federal Census and having a valuation in excess of Twenty Million Dollars (\$20,000,000), the commissions allowed to any County Treasurer shall be Three Thousand, Six Hundred Dollars (\$3,600) per annum, and such compensation shall be fixed by the Commissioners Court of said County. [As amended Acts 1937, 45th Leg., p. 501, ch. 252, § 1.]

Amendment of 1937, effective May 1, 1937. 1937 declared an emergency making the act Section 2 of the amendatory acts of effective on and after its passage.

#### Art. 3943b. Compensation of treasurer as custodian of road district funds

Section 1. In all counties in the State of Texas having a population of not less than one hundred and twenty-five thousand (125,000) nor more than one hundred and seventy-five thousand (175,000) inhabitants, according to the last Federal Census; and containing two (2) cities of more than forty thousand (40,000) inhabitants, according to the last Federal Census, and in which said counties there exists or is created any Road District or Road Districts under authority, Article 3, Section 52 of the Constitution of the State of Texas and/or Acts of the Thirty-ninth Legislature, First Called Session, Chapter 16, Page 23, the County Treasurer in such counties shall receive as salary for acting as custodian of the funds of such Road District or Road Districts a sum not to exceed Six Hundred Dollars (\$600) per annum to be fixed and determined by the Commissioners Court of such county; such salary shall be in addition to all other salary and compensation received and allowed to the County Treasurer by law, and shall be paid out of any available fund of said Road District or Road Districts in equal monthly installments. [Acts 1937, 45th Leg., p. 208, ch. 110.]

Effective April 6, 1937.

Section 2 of this Act declared an emergency making the Act effective on and after its passage.

##### Title of Act:

An Act for the purpose of authorizing County Treasurers in counties having a population of not less than one hundred and twenty-five thousand (125,000) nor more than one hundred and seventy-five thousand (175,000) inhabitants, according to the last Federal Census and containing two (2) cities of more than forty thousand (40,000) inhabitants according to the

last Federal Census, to be paid in addition to all other compensation, a salary of not to exceed Six Hundred Dollars (\$600) per year, to be fixed and determined by the Commissioners Court of such county for acting as custodian of the funds of Road District or Road Districts in such counties created under authority of Article 3, Section 52 of the Constitution of the State of Texas and/or Acts, Thirty-ninth Legislature, First Called Session, Chapter 16, Page 23, and declaring an emergency. [Acts 1937, 45th Leg., p. 208, ch. 110.]

## TITLE 64—FORCIBLE ENTRY AND DETAINER

### Art. 3985. Trial—Judgment by default

If no jury is demanded the Justice shall try the case. If defendant fails to enter an appearance or file answer in Justice Court before the case is called for trial, the Justice may enter judgment by default. If a jury is demanded by either party the jury shall be impaneled and sworn as in other cases; and after the evidence they shall return their verdict of guilty or not guilty of the charge as stated in the complaint, and judgment shall be entered accordingly. As amended Acts 1939, 46th Leg., p. 331, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of amendatory Act of 1939 de-

clared an emergency and provided that the Act should take effect from and after its passage.

### Art. 3991. [3961] [2539] [2460] Judgment by default

If defendant fails to enter an appearance upon the docket of the Justice or County Court on appearance day or file answer, before the case is called for trial, the facts alleged in the complaint may be taken as admitted and judgment by default may be entered accordingly. As amended Acts 1939, 46th Leg., p. 332.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of amendatory Act of 1939 de-

clared an emergency and provided that the Act should take effect from and after its passage.

## TITLE 65—FRAUDS AND FRAUDULENT CONVEYANCES

Art.

3995a. Promise to pay commission for sale or purchase of oil, gas, or mining leases or royalties; writing required [New].

### Art. 3995. 3965, 2543, 2464 Writing required

Real estate dealers, contracts with, see art. 6573a.

### Art. 3995a. Promise to pay commission for sale or purchase of oil, gas, or mining leases or royalties; writing required

No action shall be brought in any court in this state for the recovery of any commission for the sale or purchase of oil and/or gas mining leases, oil and/or gas royalties, minerals or mineral interests, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunto lawfully authorized. Acts 1939, 46th Leg., p. 333, § 1.

Effective 90 days after date of adjournment.

Section 2 of the Act of 1939 read as follows: "This law shall not apply to any action for commissions pending in any court in this state at or prior to the effective date of this Act."

Title of Act:

An Act forbidding suits on commissions for sale or purchase of oil and/or gas min-

ing leases, oil and/or gas royalties, minerals or mineral interests, unless the promise or agreement on which such suit is brought is in writing and signed by the person sought to be charged therewith; and providing that this Act shall not apply to any such action pending in any court in this State at the effective date of this Act. Acts 1939, 46th Leg., p. 333.

**TITLE 66—FREE PASSES, FRANKS AND TRANSPORTATION****Art. 4006. Exceptions**

The preceding Article shall not be held to prevent any steam or electric interurban railway, telegraph company, or chartered transportation company, or sleeping car company, or the receivers or lessees thereof, or persons operating same or the officers, agents, or employees thereof from granting or exchanging free passes or free transportation, franks, privileges, substitutes for pay, or other thing prohibited by the provisions of the preceding Article to any of the following named persons: The actual bona fide employees of any such person or corporation, company, association, or the members of their families; persons actually employed on sleeping cars and express cars; newsboys employed on trains; railway mail service employees and their families; furloughed, pensioned, and superannuated employees; persons who have been disabled or who have become infirm in the service of any such corporation, company, association, or person; the remains of any person killed in the employment of a common carrier; members of the family of persons killed while in the service of any such common carrier; the family or any person who was, for a period of ten (10) years or more, an employee of such common carrier and who died while in the service of the same; ex-employees traveling for the purpose of entering the service of any such common carrier; post office inspectors; the chairman of bona fide members of grievance committees of employees; bona fide custom and immigration inspectors employed by the government; State Health Officer and one assistant; Federal Health Officers; county health officers; members of the Industrial Accident Board or any employee thereof; State Railroad Commissioners; Secretary of the Railroad Commission; Engineer of the Railroad Commission; Inspector of the Railroad Commission; Auditor of the Railroad Commission; State Game, Fish and Oyster Commissioner and his two chief deputies; government representatives from the Texas fish hatcheries; shipments of fish for free distribution in the waters of this State; the necessary caretakers while en route and return of any shipments of live stock, poultry, fruit, melons, or other perishable produce; trip passes to indigent poor when application therefor is made by any religious or charitable organization; sisters of charity, or members of any religious society of like character; any minister of religion on intrastate trips in this State; any citizen of the State who served in the War between the States of the Union either on the Confederate side or on the Union side of said War, veterans of the Spanish-American War, and the wife or widow of any such citizen or veteran; veterans of the Texas Ranger force who served the State prior to the year 1900, and their wives or widows; delegates to different farmers' institutes, farmers' congresses, and farmers' union; delegates to State and district firemen's conventions from volunteer fire companies; managers of Young Men's Christian Associations, or other eleemosynary institutions while engaged in charitable work; the officers or employees of industrial fairs, provided that no more than four (4) officers or employees of any one fair or fair association shall receive free passage in any one year; persons injured in wrecks upon the road of any such company immediately after such injury, and the physicians and nurses attending such persons at the time thereof; persons and property carried in cases of general epidemic, pestilence, or other calamitous visitation at the time thereof or immediately thereafter; United States Marshals and no more than two (2) of the deputies of each such Marshal; State rangers; the

Adjutant General and Assistant Adjutant General of this State; members of the State militia in uniform and when called into the service of the State; Sheriffs and no more than two (2) of their deputies; Constables and no more than two (2) of their deputies; Chiefs of police or city marshals, whether elected or appointed; members of the Livestock Sanitary Commission of Texas and their inspectors not to exceed twenty-five (25) in number for any one year; and any other bona fide peace officer when his duty is to execute criminal process; bona fide policemen or firemen in the service of any city or town in Texas when such policemen or firemen are in the discharge of their public duty, but this provision shall not be construed so as to apply to persons holding commissions as special policemen or firemen. As amended Acts 1939, 46th Leg., p. 334, § 1.

Filed without the Governor's signature, April 28, 1939.

the Act should take effect from and after its passage.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that

## TITLE 67—FISH, OYSTER, SHELL, ETC.

### CHAPTER TWO—FISH AND OTHER MARINE LIFE

Art.

4049c. Purchase or condemnation of lands, water rights, etc., for fresh water hatcheries and for constructing and maintaining channels [New].

Art.

4050b. Consent to Federal statute providing for Federal aid to states in wildlife restoration projects [New].

Art. 4049c. Purchase or condemnation of lands, water rights, etc., for fresh water hatcheries and for constructing and maintaining channels

Section 1. The State of Texas, through the Game, Fish and Oyster Commission, shall have the right to acquire by purchase any and all land in this State that may be deemed necessary for the construction, maintenance, enlargement and operation of fresh water fish hatcheries, and for the construction and maintenance of passes leading from one body of tide-water to another. Upon approval of the title by the Attorney General of this State said Game, Fish and Oyster Commission is hereby authorized to pay for such land so purchased out of any money that has been, or may be hereafter appropriated to it by the Legislature.

Sec. 2. The State of Texas, through the Game, Fish and Oyster Commission, shall have the right, power and authority to enter upon, condemn, and appropriate lands, easements, rights-of-way and property of any person or corporation in the State of Texas for the purpose of erecting, constructing, enlarging and maintaining fish hatcheries, buildings, equipment, roads, passage-ways to said hatcheries and also shall have the right, power and authority to enter upon, condemn and appropriate lands, easements, rights-of-way and property of any person or corporation in this State for the purpose of constructing, enlarging and maintaining passes or channels from one body of tide-water to another body of tide-water in this State. Provided that the manner and method of such condemnation, assessment, and payment of damages therefor shall be the same as is now provided by law in the case of railroads.

Sec. 3. Condemnation suits brought under this Act shall be brought in the name of the State of Texas by the Attorney General at the request of the Game, Fish and Oyster Commission in Travis County, Tex-

as. All costs in such proceedings shall be paid by the State or by the person against whom such proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in such proceedings shall be paid by the State of Texas by warrant drawn by the Comptroller against any fund in the State Treasury heretofore or hereafter appropriated to the Game, Fish and Oyster Commission. Acts 1939, 46th Leg., p. 338.

Effective June 7, 1939.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the Game, Fish and Oyster Commission to acquire by purchase lands, water rights, easements, rights-of-way and property of any person in this

State; providing for the acquiring of lands, easements, rights-of-way and property of any person or corporation by condemnation proceedings; providing the manner and method of such condemnation proceedings; providing for the payment of damages and costs, and declaring an emergency. Acts 1939, 46th Leg., p. 338.

**Art. 4050b. Consent to Federal statute providing for Federal aid to states in wildlife restoration projects**

The State of Texas hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes," approved September 2, 1937 (Public, No. 415, 75th Congress),<sup>1</sup> and the Game, Fish and Oyster Commission is hereby authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in said Act of Congress, in compliance with said Act and Rules and Regulations promulgated by the Secretary of Agriculture thereunder. Acts 1939, 46th Leg., p. 337, § 1.

<sup>1</sup> 16 U.S.C.A. §§ 669-669j.

Effective March 24, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act assenting to the provisions of the

Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects and for other purposes," approved September 2, 1937, and declaring an emergency. Acts 1939, 46th Leg., p. 337.

## TITLE 69—GUARDIAN AND WARD

## CHAPTER ONE—GENERAL PROVISIONS

Art.

4112a. Payment to county clerk of liquidated and uncontested claims under \$250 of minors and incompetents without guardians [New].

Art. 4112a. Payment to county clerk of liquidated and uncontested claims under \$250 of minors and incompetents without guardians

Section 1. Whenever any minor, lunatic, idiot, or non compos mentis, who has no legal guardian shall be entitled to any sum or sums of money not exceeding Two Hundred and Fifty Dollars (\$250) from any person, firm, corporation, administrator, executor, guardian, or trustee, arising out of any liquidated and uncontested claim, such person, firm, corporation, administrator, executor, guardian, or trustee holding such sum may pay same over to the County Clerk of the county in which said minor, lunatic, idiot, or non compos mentis resides, for the account of said minor, lunatic, idiot, or non compos mentis, and the receipt of the County Clerk therefor shall be forever binding on said minor, lunatic, idiot, or non compos mentis, as of the date and to the extent of the payment so made.

**Deposit of money in trust**

Sec. 2. Whenever any such sum shall be received by any County Clerk, he shall forthwith deposit said sum in his Trust Account in the name and for the account of said minor, lunatic, idiot, or non compos mentis.

**Right of parent to withdraw deposit; bond**

Sec. 3. The father or mother of such minor, lunatic, idiot, or non compos mentis, if either be living within the State, or if both the father and mother be dead or living without the State, then such person having custody of the person of said minor, lunatic, idiot, or non compos mentis, may, upon application approved by the County Judge of the county in which said minor, lunatic, idiot, or non compos mentis resides, withdraw and take charge of said money for the benefit of said minor, lunatic, idiot, or non compos mentis, upon executing and filing with the County Clerk a proper bond, approved by the County Judge in a sum at least double the amount of said fund, payable to the County Judge, conditioned that he will use said money for the benefit of said minor, lunatic, idiot, or non compos mentis under the direction of the County Court or the Judge thereof, and that he will account for said money and the increase thereof, if any, to the minor when he becomes of age or to the lunatic, idiot, or non compos mentis when he is restored to sanity or to the legally qualified guardian of such person, when called upon to do so.

**Commission for receiving or handling money not allowed**

Sec. 4. Such person who takes such money shall receive no fees or commissions for caring for or handling the same.

**Sworn report of person expending money; filing and approval, effect of**

Sec. 4-a. When the person to whom said money has been paid by the County Clerk for the benefit of said minor, lunatic, idiot, or non compos mentis, shall have expended said money for the benefit of said minor, lunatic, idiot, or non compos mentis as directed by the County Court or Judge thereof or shall have otherwise complied with the provisions of his aforesaid bond by accounting for said money and the increase thereof,

if any, he shall file with the County Clerk from whom said money was received, his sworn report thereof; which report when so filed and approved by the County Court or Judge thereof shall operate as a discharge of said person and his sureties from any and all further liability under and by reason of the aforesaid bond. The County Court or Judge thereof shall satisfy himself that said report speaks the truth, and to that end may require said person to submit proof thereon.

**Provisions cumulative**

Sec. 5. This Act and the provisions thereof shall be cumulative of all other laws upon the same subject, and is not intended to repeal any other law upon the subject of the rights of minors, lunatics, idiots, or non compos mentis, or money belonging to such persons. [Acts 1937, 45th Leg., p. 579, ch. 289.]

Became law without Governor's signature May 6, 1937.

Section 6 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to authorize payments of funds arising out of liquidated and uncontested claims in favor of minors, lunatics, idiots, and non compos mentis; and to provide for

the disposition of such funds so paid; and to define the duties of the person holding such funds; providing that such person shall file a sworn report with the County Clerk for approval by the County Court before such person and the sureties on his bond shall be discharged from liability; providing that this Act shall be cumulative of all other laws on the same subject, and declaring an emergency. [Acts 1937; 45th Leg., p. 579, ch. 289.]

## CHAPTER SEVEN—FISCAL MANAGEMENT

### Art. 4180. [4140] [2639] [2558] Investments

If, at any time, the Guardian of the estate shall have on hand money belonging to the ward or wards beyond that which may be necessary for the education and maintenance of such ward or wards, he shall invest such money in bonds of the United States in tax-supported bonds of the State of Texas, in tax-supported bonds of any county, district, political subdivision, incorporated city or town in Texas, provided, that the bonds of counties, districts, subdivisions, cities and towns may be purchased subject only to the following restrictions: the net funded debt of said issuing unit shall not exceed ten (10) per cent of the assessed value of taxable property therein; "net funding debt" meaning the total funded debt less sinking funds on hand and further, in the case of cities, less that part of the debt incurred for acquisition or improvement of revenue producing utilities, the revenues of which are not pledged to support other obligations; provided, however, the above restrictions shall not apply to bonds issued for road purposes in this State under authority of Article III, Section 52 of the Constitution of Texas, which bonds are supported by a tax unlimited as to rate or amount, or such collateral bonds of companies incorporated under the laws of the State of Texas, having a paid-in capital of One Million Dollars (\$1,000,000) or more, when such bonds are a direct obligation of the company issuing them, and are specifically secured by first mortgage real estate notes and other securities pledged with a Trustee, or loan the same for the highest rate of interest that can be obtained therefor (secured as provided in Article 4181, Revised Civil Statutes of Texas, 1925), or purchase for said ward or wards a contract for life insurance and/or annuity in a legal reserve life insurance company, operating under and complying with the laws of the State of Texas, that may be approved by the Court having jurisdiction of the minor's estate. If a contract for life insurance and/or annuity has been issued on the life of the ward or wards (or for the benefit of the ward or wards in event of annuity) prior to date



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of guardianship, and it is made to appear that such contracts were issued by a company or companies operating under the legal reserve system, it shall be lawful to continue such contracts in full force and effect; all future premiums shall be paid out of the surplus funds of said ward or wards; provided, that said Guardian shall first apply to the Probate Court having jurisdiction and obtain an order therefrom to continue said contracts according to original terms or modify the same to fit any new development affecting the welfare of said ward or wards; provided, that before any application is granted by the Probate Court, the Guardian shall file a report in said Court showing the financial condition of the ward's or wards' estate at the time said application is made, said report to be filed in detail; provided further, that before the Judge of the Probate Court shall approve the application, there shall be filed with said Probate Court a financial statement approved by the Chairman of the Board of Insurance Commissioners showing the solvency of said company.

The signatures of the Guardian and the Probate Judge having jurisdiction of the estate of the minor or minors shall appear on all applications, and any amendments thereto, made to any insurance company under the provisions of this Article.

It is expressly provided, that the Guardian shall in no event be authorized to contract for new life insurance on the life of such ward or wards wherein such Guardian is made the beneficiary of said policy, except in such cases where the Guardian is a natural parent of the ward or wards. Each and every right, benefit, and interest accruing under any contract for insurance or annuity coming under the provisions of this Title shall become the exclusive property of said ward or wards when disability has been terminated.

All contracts for new life insurance issued under the provisions of this Act shall be limited to some form of single premium endowment insurance or single premium annuity, and it is further provided, that all such contracts shall show the cash surrender value available at the age of twenty-one (21), in excess of all premium deposits made prior thereto and according to the contract; provided, that at no time shall more than twenty-five (25) per cent of the estate be invested in insurance premiums.

By the term "Life Insurance Company" is meant any stock or mutual legal reserve company that maintains the full legal reserve required under the laws of the State of Texas, and approved by the Commissioner of Insurance. [As amended Acts 1937, 45th Leg., p. 673, ch. 336, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1964, ch. 54, § 1.]

Sec. 2. Repealed Acts 1937, 45th Leg., p. 673, ch. 336, § 2.

Prior to its repeal, section 2 was amended by Acts 1929, 41st Leg., p. 684, ch. 305. Amendment of 1937, p. 673, ch. 336, effective May 15, 1937.

Section 3 of the amendatory Act of 1937, p. 673, ch. 336, declared an emergency and provided that the Act should take effect from and after its passage.

Amendment of 1937, 2nd C.S., p. 1964, ch. 54, effective Nov. 1, 1939.

Section 2 of the amendatory act of 1937 2nd C.S., p. 1964, ch. 54, declared an emergency and provided that the act should take effect from and after its passage.

## CHAPTER NINE—ANNUAL ACCOUNTS

Art. 4225. [4186] [2684] [2602] Annual account

The guardian of an estate shall annually return to the Court an account showing:

1. Any property that may have come to his knowledge belonging to his ward which has not been previously inventoried or listed.

2. Any changes in the property of the ward which have not been previously reported.

3. A complete account of receipts and disbursements since the last annual account, and the source and nature thereof; receipts of principal and of income to be shown separately.

4. All claims that have been allowed by him against the estate since the last annual account that are still unpaid.

5. All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.

6. A complete, accurate and detailed description of the property on hand belonging to the estate, including cash balance due the ward, and the name and location of the depository wherein such cash balance and the other personal property is kept. The description of property described in detail in a previous account may be shown by reference thereto, but such property shall be described in subsequent accounts sufficiently to identify the property. Each account shall also set forth the condition of the property and the use being made thereof, and if rented, the terms upon which and the price for which rented. The detailed description of personal property where required by this Act shall, in respect to bonds, notes and other securities, include the names of the obligor and of the obligee, (or if payable to bearer such fact shall appear) date of issue and of maturity, rate of interest, serial or other identifying numbers, in what manner secured, and any other data necessary to fully identify the same and disclose whether such investment is such as is lawful for the guardian to make or retain.

7. Such other facts as may be necessary to show the true and exact condition of the estate. As amended Acts 1939, 46th Leg., p. 340, § 1.

Sec. 2. Annexed to such account, shall be a certificate by an officer of the bank or trust company in which the money on hand is deposited showing the amount thereof, and the affidavit of the guardian that such account contains a correct and complete statement of the matters to which it relates.

Sec. 3. (A) The existence and possession of any securities owned by the estate as shown by the accounting shall be proved by one of the following means; viz., I. By an affidavit of the guardian of such estate;

(a) an officer of the bank or other depository wherein said securities are held for safe-keeping; provided, that if such depository is the guardian, such certifying officer shall be an officer other than the officer verifying the account; or

(b) an authorized representative of the corporation which is surety on the guardian's bond; or

(c) the clerk or a deputy clerk of a court of record in this State; or

(d) other reputable person designated by the court upon request of the guardian or other interested party. Such affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the guardian as assets of the estate in which the accounting is made, and describing the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and stating the time when and place where exhibited.

II. By the guardian exhibiting the said securities to the Judge of the Court who shall endorse on the account, or include in his order in respect thereof a statement that the securities shown therein as on hand were in fact exhibited to him and that those so exhibited were the same as those shown in the account, or note any variance. Such endorsement by said Judge or the affidavit of another as herein provided for shall be recorded in the minutes with such account.

For Annotations and Historical Notes, see *Vernon's Texas Annotated Statutes*

B. No accounting shall be approved unless possession of the securities is proved as in this Section 3 provided; and if the securities are exhibited at any place other than where deposited for safe-keeping it shall be at the expense and risk of the guardian.

C. The Court may require any guardian to furnish such additional evidence as to the existence and custody of such securities and other personal property as in his discretion he may deem proper; and to exhibit them to the Judge of the Court or any person designated by him at any time at the place where held for safe-keeping. Acts 1939, 46th Leg., p. 340.

Effective April 24, 1939.

the Act should take effect from and after its passage.

Section 4 of the amendatory Act of 1939 declared an emergency and provided that

## CHAPTER THIRTEEN—NON-RESIDENT GUARDIANS AND WARDS

### Art. 4285. [4256] [2753] [2671] Letters of guardianship

Where a guardian and his ward are nonresidents, such guardian may file in the County Court of any county where all or part of said ward's estate is located, a full and complete transcript from the records of a Court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the Clerk of the Court in which the proceedings were had, under the seal of such Court, if there be one, together with a certificate from the Judge, Chief Justice, or presiding Magistrate of such Court, as the case may be, that the attestation of such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor, person of unsound mind, or habitual drunkard situated in this State, upon filing a bond with sureties as provided in Article 4141. [As amended Acts 1937, 45th Leg., 1st C.S., p. 1803, ch. 27, § 1.]

Effective July 7, 1937.

the act should take effect from and after its passage.

Section 4 of the amendatory act of 1937 declared an emergency and provided that

### Art. 4286. [4257] [2754] [2672] May remove property

Upon the recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the State, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and if it be real property, he may obtain an order from the Court in this State having jurisdiction of such estate for the sale of it and remove the proceeds; or he may obtain an order under the conditions and upon a proper application, as required of resident guardians, to rent or lease such real estate for agricultural, business, or residence purposes, or he may obtain an order to make oil and gas and other mineral leases upon such real property and may if the order of the Court so directs remove the proceeds. Such sale, leases, oil and gas and other mineral leases shall be made, returned, and acted upon by the Court as other sales of real estate, leases, oil and gas and other mineral leases by a resident guardian made in accordance with this title. [As amended Acts 1937, 45th Leg., 1st C.S., p. 1803, ch. 27, § 2.]

Effective July 6, 1937.

### Art. 4289. [Repealed by Acts 1937, 45th Leg., 1st C.S., p. 1803, ch. 27, § 3.]

Effective July 6, 1937.

## TITLE 70—HEADS OF DEPARTMENTS

Chap.

6. Veterans' Preferences [New].

### CHAPTER THREE—STATE TREASURER

Art.

4379a. Obligations of municipalities and subdivisions of state payable at State Treasurer's office; State Treasurer ex-officio treasurer and fiscal agent [New].

Art.

4379b. Obligations of municipalities and political subdivisions may be made payable at State Treasurer's office; State Treasurer as ex officio treasurer and fiscal agent [New].

**Art. 4379a. Obligations of municipalities and subdivisions of state payable at State Treasurer's office; State Treasurer ex-officio treasurer and fiscal agent**

Section 1. Any bond, warrant or other evidence of indebtedness issued by any municipality or political subdivision of this State, including Counties, Cities, Road, School, Water Improvement, Irrigation, Drainage and Navigation Districts may by their terms, together with interest thereon, be made payable at the office of the State Treasurer of the State of Texas, in the City of Austin, and the State Treasurer is hereby designated as Ex-officio Treasurer and fiscal agent of said municipality or political subdivision for the purpose of receiving deposit of funds for the payment of such bonds and interest thereon, making payment of said obligation as provided therein and for all purposes herein designated and those necessary or incidental thereto.

#### **Deposit and disposition of funds by State Treasurer; warrants of Comptroller of Public Accounts**

Sec. 2. The State Treasurer shall deposit all funds coming into his hands as Ex-officio Treasurer, and on account of his designation as fiscal agent of such municipality or political subdivision, shall keep a separate account for each municipality or political subdivision of any moneys received for the credit of such municipality or political subdivision under the provisions of this Act. All money deposited to the credit of such municipality or political subdivision with the State Treasurer up to August 31, 1939 are hereby appropriated to said respective municipalities and political subdivisions and shall be received, payable, used and applied by the State Treasurer as fiscal agent and Ex-officio Treasurer of said respective municipality and political subdivision, to the payment of interest and principal due on obligations maturing on or prior to said time as may be directed in writing by said respective municipality or political subdivision, and each year thereafter all moneys deposited with the State Treasurer for such purposes and all moneys remaining therein from the previous year shall be received and held by him as fiscal agent and Ex-officio Treasurer of said municipality or political subdivision and shall be subject to appropriation for the payment of interest and principal from time to time upon any bonds made payable at the office of the State Treasurer in such manner as may be directed by such municipality or political subdivision. As payment of interest and principal becomes due upon any obligation, the Treasurer of said municipality or political subdivision shall remit to the State Treasurer, not later than fifteen (15) days

prior to date of maturity all sums due or to become due on any maturity. Upon receipt of such funds by the State Treasurer, he shall request the State Comptroller of Public Accounts to issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin. Such warrants shall state on their face that the proceeds of the same are to be applied by the State Treasurer to the payment of certain specified bonds or interest coupons therein described, giving the name of the municipality or political subdivision of which they were issued, numbers, amounts and dates of the maturities of the obligations and interest to be paid with instructions to the State Treasurer to return to the Treasurer of such municipality or political subdivision such obligations and interest coupons when the same are paid and the Treasurer of said municipality or political subdivision, upon receipt of same, shall cause to be duly entered a record of such payment and cancellation.

#### **Commissions for receiving and disbursing funds**

Sec. 3. The State Treasurer shall collect for the use of the State, from said municipality or political subdivision for receiving and disbursing such funds, a commission of one-eighth of one per cent on interest, and one twentieth of one per cent on principal. The Treasurer of said municipality or political subdivision shall remit to the State Treasurer as Ex-officio Treasurer of said municipality or political subdivision, the exchange or commission as herein provided at the time of such remittance for the payment of any maturing obligation or interest thereon. Upon receipt of such exchange or commission paid by the municipalities or political subdivisions, the State Treasurer shall credit the same to commissions and exchanges earned, and all commissions and exchanges earned or so much as necessary are hereby appropriated to the State Treasurer to be used by him in the administration of the provisions of this Act. Any balance remaining at the end of the fiscal year shall be available for use in the next fiscal year.

#### **Purpose and construction of act**

Sec. 4. It is the general intent of this Act to provide an inexpensive and feasible means for the payment of bonds and interest coupons issued by municipalities and political subdivisions in this State at the office of the State Treasurer, and this Act shall be broadly construed to carry out such intent and purpose, and any official or officials, or any municipality or political division and the State Treasurer concerned in any way with the administration of the Act, is authorized and directed to perform any and all acts and duties necessary, requisite or appropriate to facilitate and expedite the operation of the Act to the end that such bonds and interest thereon may be promptly paid and the payment thereof clearly evidenced and accounted for.

#### **Bonds and coupons cancelled and returned; balance returned; statement of account**

Sec. 5. The State Treasurer shall return to the municipality or political subdivision depositing funds for the payment of interest coupons or the retirement of bonds, all such coupons and bonds as have matured or been retired by purchase, after canceling the same, together with a statement of the account of such municipality or subdivision, showing the amounts received and placed to its credit, the service charges, and the amount of coupons or bonds retired. The State Treasurer shall remit to said municipality or subdivision of the State any

balance remaining in his hands more than two years, for which bonds or coupons have not been presented for payment, and thereafter the municipality or subdivision shall pay such coupons or bonds when presented. Any municipality or subdivision shall have the right at any reasonable time to a statement of its account with the State Treasurer. Acts 1937, 45th Leg., p. 1271, ch. 475.

Effective June 9, 1937.

Section 6 of the act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

As to expiration date of this act, see art. 4379b, note.

For substantially the same provisions of 1939 Act, see article 4379b, of this title.

**Title of Act:**

An Act providing and authorizing that any bonds, interest thereon, or similar obligations, issued by any municipality or political division of the State may be made payable at the office of the State Treasurer,

designating and constituting the State Treasurer, Ex-officio Treasurer and fiscal agent of such municipalities and political divisions for such purposes, providing for the deposit and payment of funds by municipalities and political divisions with the State Treasurer for such purposes; providing that the State Treasurer shall cancel and return coupons and bonds that have matured or have been retired by purchase and shall remit balances remaining on hand for two years for which bonds have not been presented for payment; and declaring an emergency. [Acts 1937, 45th Leg., p. 1271, ch. 475.]

**Art. 4379b. Obligations of municipalities and political subdivisions may be made payable at State Treasurer's office; State Treasurer as ex officio treasurer and fiscal agent**

Section 1. Any bond, warrant, or other evidence of indebtedness issued by any municipality or political subdivision of this State, including counties, cities, road, school, water improvement, irrigation, drainage, and navigation districts may at the discretion of the municipality or political subdivision, together with interest thereon, be payable at the office of the State Treasurer of the State of Texas, in the City of Austin, and the State Treasurer is hereby designated as ex officio Treasurer and fiscal agent of said municipality or political subdivision for the purpose of receiving deposit of funds for the payment of such bonds and interest thereon, making payment of said obligation as provided therein and for all purposes herein designated and those necessary or incidental thereto.

**Deposit and disposition of funds by State Treasurer; warrants of Comptroller of Public Accounts**

Sec. 2. The State Treasurer shall deposit all funds coming into his hands as ex officio Treasurer, and on account of his designation as fiscal agent of such municipality or political subdivision, shall keep a separate account for each municipality or political subdivision of any moneys received for the credit of such municipality or political subdivision under the provisions of this Act. All moneys deposited to the credit of such municipality or political subdivision with the State Treasurer up to August 31, 1941, are hereby appropriated to said respective municipalities and political subdivisions and shall be received, payable, used, and applied by the State Treasurer as fiscal agent and the ex officio Treasurer of said respective municipality and political subdivision, to the payment of interest and principal due on obligations maturing on or prior to said time as may be directed in writing by said respective municipality or political subdivision, and each year thereafter all moneys deposited with the State Treasurer for such purposes and all moneys remaining therein from the previous year shall be received and held by him as fiscal agent and ex officio Treasurer of said municipality or political subdivision and shall be subject to appropriation for the pay-

ment of interest and principal from time to time upon any bonds made payable at the office of the State Treasurer in such manner as may be directed by such municipality or political subdivision. As payment of interest and principal becomes due upon any obligation, the Treasurer of said municipality or political subdivision shall remit to the State Treasurer, not later than fifteen (15) days prior to date of maturity all sums due or to become due on any maturity. Upon receipt of such funds by the State Treasurer, he shall request the State Comptroller of Public Accounts to issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin. Such warrants shall state on their face that the proceeds of the same are to be applied by the State Treasurer to the payment of certain specified bonds or interest coupons therein described, giving the names of the municipality or political subdivision of which they were issued, numbers, amounts, and dates of the maturities of the obligations and interest to be paid with instructions to the State Treasurer to return to the Treasurer of such municipality or political subdivision such obligations and interest coupons when the same are paid and the Treasurer of said municipality or political subdivision, upon receipt of same, shall cause to be duly entered a record of such payment and cancellation.

#### **Commission for receiving and disbursing funds**

Sec. 3. The State Treasurer shall collect for the use of the State, from said municipality or political subdivision for receiving and disbursing such funds, a commission of one-eighth of one per cent on interest, and one-twentieth of one per cent on principal. The Treasurer of said municipality or political subdivision shall remit to the State Treasurer as ex officio Treasurer of said municipality or political subdivision, the exchange or commission as herein provided at the time of such remittance for the payment of any maturing obligation or interest thereon. Upon receipt of such exchange or commission paid by the municipalities or political subdivisions, the State Treasurer shall credit the same to commissions and exchanges earned, and all commissions and exchanges earned, or so much as necessary, are hereby appropriated to the State Treasurer to be used by him in the administration of the provisions of this Act. Any balance remaining at the end of any fiscal year shall be available for use in the next fiscal year.

#### **Purpose and construction of act**

Sec. 4. It is the general intent of this Act to provide an inexpensive and feasible means for the payment of bonds and interest coupons issued by municipalities and political subdivisions in the State at the office of the State Treasurer, and this Act shall be broadly construed to carry out such intent and purpose, and any official or officials, or any municipality or political subdivision and the State Treasurer concerned in any way with the administration of the Act, is authorized and directed to perform any and all acts and duties necessary, requisite or appropriate to facilitate and expedite the operation of the Act to the end that such bonds and interest thereon may be promptly paid and the payment thereof clearly evidenced and accounted for.

#### **Bonds and coupons cancelled and returned; balance returned; statement of account**

Sec. 5. The State Treasurer shall return to the municipality or political subdivision depositing funds for the payment of interest coupons or the retirement of bonds, all such coupons and bonds as have matured

or been retired by purchase, after cancelling the same, together with a statement of the account of such municipality or subdivision, showing the amounts received and placed to its credit, the service charges, and the amount of coupons or bonds retired. At the request of the municipality or political subdivision, the State Treasurer shall remit to said municipality or subdivision of the State any balance remaining in his hands more than two (2) years, for which bonds or coupons have not been presented for payment, and thereafter the municipality or political subdivision shall pay such coupons or bonds when presented. Any municipality or political subdivision shall have the right at any reasonable time to a statement of its account with the State Treasurer. Acts 1939, 46th Leg., p. 620.

Effective July 7, 1939.

Section 6 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing and authorizing that any bonds, interest thereon, or similar obligations, issued by any municipality or political subdivision of the State may be payable at the office of the State Treasurer; designating and constituting the State Treasurer, ex officio Treasurer and fiscal agent of such municipalities and political

subdivisions for such purposes; providing for the deposit and payment of funds by municipalities and political subdivisions with the State Treasurer for such purposes; providing that the State Treasurer shall cancel and return coupons and bonds that have matured or have been retired by purchase and shall at the request of the municipality or political subdivision remit balances remaining on hand for two (2) years for which bonds have not been presented for payment; and declaring an emergency. Acts 1939, 46th Leg., p. 620.

## CHAPTER FIVE—DEPARTMENT OF PUBLIC SAFETY

### [Art. 4413(5). Directors and assistant directors; salary]

The Commission shall appoint a Public Safety Director hereinafter designated as the 'Director,' who shall be a citizen of this State and who shall hold his position until removed by the Commission. The Commission shall also appoint an Assistant Director who shall perform such duties as may be designated by the Director. The Director and Assistant Director shall be selected on the basis of training, experience, and qualifications for said positions, and shall have at least five (5) years experience, preferably police or public administration. The Director and Assistant Director shall draw annual salaries as fixed by the Legislature. The Director shall be directly responsible to the Commission for the conduct of all the affairs of the Department. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 1.]

Amendment of 1937, effective May 19, 1937.

Section 8 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

### [Art. 4413(8)]. Appointment of division and bureau chiefs

It shall be the duty of the Director with the advice and consent of the Commission to appoint the Chiefs of the several Bureaus provided for in this Act. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 2.]

Amendment of 1937, effective May 19, 1937.

Emergency section. See note under article 4413(5), ante.

### [Art. 4413(11)]. The Texas Rangers

(1) The Texas Ranger Force and its personnel, property, equipment and records, now a part of the Adjutant General's Department of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Department of Public Safety, and are hereby designated as the Texas



Rangers, and as such, constitute the above mentioned division of the Department.

(2) The Texas Rangers shall consist of six (6) captains, one headquarters sergeant, and such number of privates as may be authorized by the Legislature, except in cases of emergency when the Commission, with the consent of the Governor, shall have authority to increase the force to meet extraordinary conditions. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 3.]

Amendment of 1937, effective May 19, 1937.

Emergency section. See note under article 4413(5), ante.

#### [Art. 4413(12)]. The Texas Highway Patrol

(1) The State Highway Motor Patrol of Texas and its personnel, property, equipment and records, now a part of the Highway Department of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Department of Public Safety, and are hereby designated as the Texas Highway Patrol, and as such constitute the above mentioned division of the Department.

(2) The Texas Highway Patrol Division of the Department of Public Safety shall consist of Chief Patrol Officer, who shall be the executive officer of the Patrol, and not exceeding fifteen (15) captains, and not exceeding twenty (20) sergeants and not exceeding three hundred (300) privates, and such clerical help as may be determined by the Legislature in its biennium appropriation bill. Provided that if an applicant be otherwise qualified as a private thereunder, his literary attainment shall not preclude his appointment as such private. [As amended Acts 1937, 45th Leg., p. 174, ch. 91, § 1.]

Amendment of 1937, effective April 2, 1937.

Section 12, subsection 2, was also amended by Acts 1937, 45th Leg., p. 772, ch. 373, § 4. See subsection (2), post.

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

(2) The Texas Highway Patrol Division shall consist of the Chief Patrol Officer who shall be the executive officer of the Patrol and such number of captains, sergeants, and privates as may be authorized by the Legislature, and such administrative and clerical help as may be determined by the Commission. As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 4.

Amendment of 1937, effective May 20, 1937.

Section 12, subsection 2, was also amended by Acts 1937, 45th Leg., p. 174, ch. 91, § 1. See subsection (2), ante.

Emergency section. See note under section 4413(5), ante.

#### [Art. 4413(15)]. The Bureau of Communications

(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Communications. As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 5.

Amendment of 1937, effective May 19, 1937.

Emergency section. See note under section 4413(5), ante.

#### [Art. 4413(16)]. The Bureau of Intelligence

(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Intelligence. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 6.]

Amendment of 1937, effective May 20, 1937.

Emergency section. See note under section 4413(5), ante.

## [Art. 4413(17)]. The Bureau of Education

(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Education. The Chief of said Bureau shall organize schools for the members of the Department and other peace officers, and shall give instruction in such schools, and he shall have had substantial experience in law enforcement work and in the instruction of law enforcement officers. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 7.]

Amendment of 1937, effective May 20, 1937. Emergency section. See note under section 4413(5), ante.

## CHAPTER SIX—VETERANS' PREFERENCES [NEW].

## Art.

4413(30). Preferences for veterans in state departments.

## Art. 4413(30). Preferences for Veterans in state departments

Section 1. That from and after the effective date of this Act, in every State Department in this State, all honorably discharged soldiers, sailors, nurses and marines, from the Army and Navy of the United States in the late Spanish-American and Phillipine Insurrection Wars, and the China Relief Expedition, and the late World War, wherein the United States of America and the Allied Nations were engaged in war against the Imperial Government of Germany and its allies, and who are and have been residents or citizens of the State of Texas for a period of ten (10) years next preceding the date of application, and are competent and fully qualified, shall be entitled to preference in appointments, employment, and promotion over other applicants therefor; provided, however, that no such preference shall be extended to such soldiers, sailors, marines, and nurses who are receiving from the State or Federal Government any monies totaling Fifty (\$50.00) Dollars or more by reason of disabilities incurred during active service in the Army, Navy, Marine, or Nurse Corps, or by reason of Old Age Assistance payment, or any other Social Security monies provided by law, and the persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of age, or by reason of any physical disability, provided such age or disability does not render him incompetent to perform properly and capably the duties of the position applied for; and when such soldier, sailor, nurse, or marine shall apply for appointment or employment under this Act, the officer, executive head of such department, or person or persons, whose duty it is or may be to appoint or employ such person to fill such position and/or place, shall, before appointing or employing any one to fill such position and/or place, make an investigation as to the qualifications of said soldier, sailor, nurse and/or marine for such position or place, and if the applicant is a person of good moral character, and can perform the duties of said position applied for by such person as hereinabove provided, said officer, executive head of department, board and/or other person having the appointive power, shall appoint said soldier, sailor, nurse, or marine to such position and/or place of employment.

Sec. 2. The appointive power, as set out in Section 1 hereof, in making such appointments in the several State Departments, shall ascertain the number of employees in said department and shall give preference to those persons set out in Section 1 hereof, to the extent that not less than ten (10%) per cent of the total number of employees so employed in said

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

department shall be selected from those given preference in Section 1 of this Act; provided, however, that on and after the passage of this Act, those departments of the State Government which do not have a ten (10%) per cent quota, as herein prescribed, shall, upon replacing employees in vacancies existing, give preference to a veteran or nurse of the herein named wars, until such time as the department shall have reached the prescribed total of ten (10%) per cent.

Sec. 3. This Act shall apply to all State Departments supported by funds from the General Appropriation Funds, except the Educational Institutions of this State, and to those departments receiving special allotments of funds from the Federal Government, provided, however, that nothing herein shall be construed as superseding any provisions of the Acts of Congress, through or by which such grants are made. Said Act shall also apply to all special emergency appropriations of State funds.

Sec. 4. It is hereby provided that this Act shall in no way affect the status of any person now employed in a department of the State Government.

Sec. 5. If any provision of this Act shall be found to be in conflict with the Federal Laws, or any limitations fixed by Federal Grants of funds to the departments, this Act shall be so construed as to operate to the extent only with reference to such Federal Grants as it may be found to be in harmony therewith, and shall be in force with reference to said funds, to the extent of its harmonious provisions, and no further.

Sec. 6. No provisions of this Act shall apply or be construed as operative in counties, cities, and other political subdivisions of this State. Acts 1939, 46th Leg., p. 617.

Effective 90 days after June 21, 1939, date of adjournment.

Section 7 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for preference of employment in all State Departments of this State of honorably discharged soldiers, sailors, nurses and marines of the Army and Navy of the United States in the late Span-

ish-American and Phillipine Insurrection Wars, in the China Relief Expedition, and the late World War of the Allied Nations; providing per cent of preference; providing mode and manner of ascertaining said per cent; providing qualifications for applicant; providing remedies in case of refusal to make such appointments; and providing exemptions from said Act; and declaring an emergency. Acts 1939, 46th Leg., p. 617.

## TITLE 71—HEALTH—PUBLIC

Chap.

3A. Bedding [New].

14. Group Hospital Service [New].

## CHAPTER ONE—HEALTH BOARDS AND LAWS

Art.

4436a—1. City-County Health Units in counties containing city of 90,000 to 120,000 population [New].

Art.

4436a—2. Tax levy to create health units in counties of 22,200 to 22,500 authorized [New].

Art. 4436a—1. City-County Health Units in counties containing city of 90,000 to 120,000 population

Section 1. In any county in this State containing an incorporated city having a population of not less than ninety thousand (90,000) inhabitants nor more than one hundred and twenty thousand (120,000) inhabitants, as shown by the last preceding Federal Census, the Commissioners Court of such county and the City Council of such city may co-operate in forming a City-County Health Unit and combine the health units of each political subdivision for such purpose, and appropriate funds to the combined health unit in such proportion as may be agreed to between said Commissioners Court and said City Council.

**City-County Board of Health; appointment; qualifications; term of office**

Sec. 2. Said Health Unit shall be under the direction and supervision of the City-County Board of Health, which shall consist of seven (7) members, resident citizens of the county, who shall have resided in said county for a period of more than three (3) years next preceding the time of their appointment. All of such members shall be appointed by the joint action of the Commissioners Court and the City Council. Three (3) of the members shall be legally qualified, licensed, and practicing physicians, and shall be approved by the Medical Society of the county; one of the members shall be a qualified, licensed, and practicing dentist, and shall be approved by the Dental Society of the county; all members shall serve without compensation. Of the first members of said Board, four (4) shall serve for a period of one (1) year and three (3) for a period of two (2) years, and thereafter, all appointments shall be for a period of two (2) years, except those appointees who fill the unexpired term of some member. All vacancies caused by the expiration of a term, death, resignation, or removal of members shall be filled by the appointing bodies as above prescribed. No member shall be removed from office except for neglect of duty, incompetence, malfeasance, or conviction of a felony, and then only after notice of the charge made and a full hearing before the appointing bodies with the right of the member removed to appeal to the Courts and have a trial de novo, provided, however, that if any member misses any three (3) consecutive regular meetings without being excused by the Board as a whole, the Board shall declare a vacancy and notify the appointing authority of such fact, so that same may be filled. The Board shall make such rules and regulations for the proper conduct of its duties as it shall find necessary and expedient, and shall possess full supervisory powers over the public health of the county and over the functioning and personnel of the City-County Health Unit, and shall be authorized to make any and all such rules and regulations not in conflict with the ordinances of the city and laws of the

State, as they may deem best to promote and preserve the health of the county. All matters of public health involving the expenditure of public funds shall be submitted to the Board for its study and recommendations before final action is taken thereon by the City Council and Commissioners Court.

#### **Budget**

Sec. 3. Prior to preparation of the budget by the City Council and the Commissioners Court, for the operation of the City-County Health Unit, recommendation shall be obtained from the Board with regard thereto and after the budget has been fixed, the Board shall have the same power of transferring funds from item to item as is possessed by the City Council and Commissioners Court over budgets of city and county.

#### **Managing director; appointment and removal**

Sec. 4. A director shall be appointed to actively manage the operation of the Health Unit under the supervision of the City-County Board of Health. Said director shall be appointed jointly by the Commissioners Court and the City Council, subject to the approval of the City-County Board of Health. The director may be removed at will by the appointing authorities. Likewise, the director may be removed by the City-County Board of Health, provided that such action shall be subject to review by the appointing authorities, and if requested by the director, a hearing will be had before the appointing authorities to pass upon the action of the Board in removing said director, and said appointing authorities may reinstate said director. No County Health Officer and no City Health Officer shall be appointed in any such health unit.

#### **Employees; salaries**

Sec. 5. The Commissioners Court and the City Council shall determine the number of employees to constitute the Health Unit and shall fix the salaries of such employees, provided however, that prior to eliminating any or creating any such position in said Unit or to fixing or changing any salary of any employee thereof, the Commissioners Court and City Council shall request recommendation from the City-County Board of Health with regard thereto, although such recommendation shall not be binding on such bodies. Salaries of said employees being once fixed, no increase or decrease shall become effective without approval of the Board of Health, provided further, however, that nothing herein shall prevent the Commissioners Court and City Council, for reason of economy, in eliminating any position or in generally decreasing the salaries. All employees of the Health Unit, other than the director as hereinabove set out, shall be appointed and may be discharged or suspended without pay by the director, subject to the approval of the Board of Health and of the Commissioners Court and City Council.

#### **Duration of existence of unit**

Sec. 6. After the City Council and Commissioners Court have, by resolution, determined to create a City-County Health Unit under the terms of this Act, said Unit shall remain in existence for at least a period of two (2) years, during which time said Commissioners Court and City Council shall be without authority to abolish said Unit, but at the end of every two-year period, said respective bodies shall determine, by resolution, whether said Unit shall be continued as a City-County Health Unit or shall be operated separately as now provided by law.

**Co-operation with other counties**

Sec. 7. Any City-County Health Unit created under this Act, having determined by resolution in joint action of the Commissioners Court and City Council that it is to the best interest of the county and city to co-operate with one or more counties having a population of not more than fifteen thousand (15,000) inhabitants in the operation of a Health Unit, may co-operate with such county or counties under such arrangement as may be entered into between the City Council and the Commissioners Court of said City-County Health Unit and the Commissioners Court of said county or counties. Any county having a population of not more than fifteen thousand (15,000) inhabitants which desire to co-operate with any City-County Health Unit created under the terms of this Act, may, through action of its Commissioners Court, co-operate with said City-County Health Unit as provided in this Section. Acts 1939, 46th Leg., Spec.L., p. 844.

Effective April 5, 1939.

Section 8 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to provide for and create a City-County Health Unit in any county containing an incorporated city having a population of not less than ninety thousand (90,000) inhabitants nor more than one hundred and twenty thousand (120,000) inhabitants according to the last preceding Federal Census, and to provide that the Commissioners Court of said county and the City Council of said city may co-operate in forming a City-County Health Unit and combine the Health Units of each political subdivision for such purpose and appropriate funds to the combined Health Unit in such proportion as may be agreed

to between the Commissioners Court and the City Council; said Health Unit to be under the direction and supervision of the City-County Board of Health; and providing for the election and/or appointment of members of said City-County Health Unit; and providing for the qualifications of the members of the said City-County Health Unit, and for their terms of office; and providing for the operation of said City-County Health Unit and for funds for the operation thereof; providing that a director shall be appointed to actively manage the operation of the Health Unit under the supervision of the City-County Board of Health; providing that the Commissioners Court and the City Council shall determine the number of employees to constitute the Health Unit and the salaries of such employees; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 844.

**Art. 4436a—2. Tax levy to create health units in counties of 22,200 to 22,500 authorized**

Section 1. The Commissioners Courts of each county of this State having a population of not less than twenty-two thousand, two hundred (22,200) nor more than twenty-two thousand, five hundred (22,500) according to the last preceding Federal Census are hereby authorized to levy a tax not to exceed Ten (10) Cents on each one hundred dollars valuation upon personal or real property for the purpose of creating a county health unit and for the purpose of buying the necessary vaccines and to pay for the necessary medical services required for the immunization of school children and indigent people from communicable diseases and to pay as much as one-half or any portion thereof as they may deem reasonable and necessary for medical treatment and hospitalization of indigent people who are not paupers. Nothing herein shall be construed as being mandatory upon said Commissioners Court and is hereby declared to be optional and within the discretion of the Commissioners Courts of such counties.

Sec. 2. The Commissioners Court of each county that creates a county health unit in accordance with the provisions of Section 1 hereof, shall create and set up a fund to be known as the County Health Unit Fund, in which is to be placed the proceeds of the tax provided for in Section 1 hereof, and from which shall be drawn the funds necessary for

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

the creation of the county health unit and for the purposes set out in Section 1 of this Act. Acts 1939, 46th Leg., Spec.L., p. 847.

Effective June 13, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the Commissioners Courts of certain counties, at their option, to levy a tax not to exceed Ten (10) Cents on the one hundred dollars valuation upon personal and real property for the purpose of creating a county health unit and paying

for medical supplies and services for the immunization of school children and indigent people from communicable diseases; authorizing the Commissioners Court to pay as much as one-half or any portion thereof as they may deem reasonably necessary for the treatment of indigent people other than paupers; providing for the creation of a county health unit fund; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 847.

### CHAPTER THREE—FOOD AND DRUGS

**Art. 4473. Preservatives added; regulations by State Board of Health**

No person shall manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate, sulphurous acids or sulphites, salicylic acid or salicylates, abradol, beta naphthol, fluorine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except diluted phosphoric acid, any preparation of lead or copper or other ingredients injurious to health; provided, however, that organic salicylates used for flavoring, such as methyl salicylate, oil of betula lenta or oil of gaultheria procumbens shall not be prohibited. Nothing herein shall be construed as prohibiting the sale of foods or drinks preserved with one-tenth of one percent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated on the label.

The State Board of Health is hereby authorized, for the protection of the public health, to promulgate regulations limiting the quantity of oxides of sulphur and other bleaching, clarifying or refining agents, that may be used for bleaching, clarifying or refining fruits, vegetables and other foods. As amended Acts 1937, 45th Leg., p. 539, ch. 265, § 1.

Amendment of 1937, effective May 5, 1937 declared an emergency making the act effective on and after its passage.

Section 2 of the amendatory act of

### CHAPTER 3A.—BEDDING [NEW].

**Art.**

4476a. Bedding—Manufacture, repair or renovating—definitions.

**Art. 4476a. Bedding—Manufacture, repair or renovating—definitions**

Section 1. (a). The term "bedding" as used in this Act shall mean mattresses, pillows, bolsters, feather beds and other filled bedding of any description.

(b). The term "Department" when used in this Act shall mean the State Board of Health.

(c). The term "person" as used in this Act shall include persons, partnerships, companies, corporations and associations.

(d). The term "renovate" as used in this Act shall mean to restore to former condition or to place in a good state of repair.

(e). The term "materials" as used in this Act shall mean all articles, or portions thereof, used as filling or covering in the manufacture, repair or renovation of bedding.

(f). The term "new" as used in this Act shall mean any article or material which has not been previously used for any purpose.

(g). The term "second-hand" as used in this Act shall mean any article or material, or portion thereof, of which former use has been made in any manner whatsoever.

(h). Wherever in this Act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included.

#### **Labelling of bedding required**

Sec. 2. (a). All bedding shall bear securely attached thereto and plainly visible, a substantial white cloth tag upon which shall be indelibly stamped or printed with black ink, in the English language, a statement showing whether new materials or second-hand materials have been used in filling such bedding, and type or grade of cotton and all other materials used in filling mattress to which attached when new materials are used, with approximate percentages when mixed; what germicidal treatment, if any, has been applied to the materials or to the bedding; the date of such germicidal treatment; the number of the permit of the person manufacturing the bedding; and the number of the permit of the person applying such germicidal treatment, if any.

(b). The terms used on the tag to describe materials shall be restricted to those defined in the regulations of the Department, and no trade or substitute terms shall be used.

(c). It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter, or cause to be removed, defaced or altered, any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 7 of this Act over any lettering on the tag, shall be construed to be defacement of the tag.

(d). The size of the tag to be affixed to new bedding required by this Section shall be not less than six (6) square inches, and the lettering thereon, covering the statement of filling materials, shall be in plain type not less than one-eighth (1/8) inch in height.

(e). Every article of bedding manufactured for resale containing second-hand material, shall bear, securely sewn thereto on all four sides of the tag, attached to both sides of the article of bedding, a substantial white cloth tag four (4) by eight (8) inches in size, upon which shall be indelibly stamped or printed in red ink, in the English language, in plain type not less than one-half (1/2) inch in height, stating: "second-hand material".

#### **Use of materials from dump-grounds and hospitals**

Sec. 3. No person shall manufacture, repair or renovate into bedding or batting, using discarded materials obtained from dump-grounds, junk yards, or hospitals within or without the State of Texas.

#### **Germicidal treatment of materials**

Sec. 4. All second-hand materials, or portions thereof, for resale, shall be subjected to a germicidal treatment currently recommended by the Department.

#### **Enforcement of act**

Sec. 5. The State Board of Health is hereby charged with the enforcement of this Act, for the protection of health and to prevent the spread of disease. It is further empowered, and its duty shall be to



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of this Act, and to prescribe means, methods, and practices to make effective such provisions.

#### Permits

Sec. 6. (a). No person shall engage in the business of manufacturing, repairing or renovating any bedding unless he shall have obtained a permit from the Department.

(b). No person shall be considered to have qualified to apply an acceptable germicidal process until such process has been registered with and approved by the Department, after which a numbered permit shall then be issued by the Department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of the permit holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the treatment device. Holders of permits to apply germicidal treatment shall be required to keep an accurate record of all materials which have been subjected to germicidal treatment, including the source of material, date of treatment, and name and address of the buyer of each, and such records shall be available for inspection at any time by authorized representatives of the Department.

(c). For all initial permits issued, as required by the preceding paragraph (a) of this Section, there shall, at the time of issuance thereof, be paid by the applicant to the Department, a fee of Five (\$5.00) Dollars. An annual renewal charge of Two and 50/100 (\$2.50) Dollars shall be paid to the same Department.

(d). For all initial permits issued, as required by the preceding paragraph (b) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Twenty-five (\$25.00) Dollars. An annual renewal charge of One (\$1.00) Dollar shall be paid to the same Department.

(e). Any permit issued in accordance with the provisions may be revoked by the State Health Officer upon proof of violation of any of the provisions of this Act. A reissuance of said permit shall be subject to provisions as set forth for an initial permit.

#### Registration for selling

Sec. 7. (a). No person shall manufacture, renovate, sell or lease or have in his possession with intent to sell or lease in the State of Texas, any bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by this Department.

(b). The Department shall register all applicants for stamps and assign to every such person a registration number, which thereafter shall constitute his identification record, and said identification shall not be used by any other person.

(c). Adhesive stamps as provided for by this Act shall be furnished by the Department in quantities of not less than five hundred (500), for which the applicant shall pay at the rate of Five (\$5.00) Dollars for each five hundred (500) stamps. The State Health Officer is hereby authorized to prepare and cause to be printed, adhesive stamps which shall contain a replica of the seal of the State of Texas, the registry number of the person applying therefor, and such other matter as the State Health Officer shall direct.

**Proceeds placed in general fund**

Sec. 8. All moneys obtained from the sale of stamps, fees and other moneys collected in the administration of this Act shall be payable to the Department, and when collected shall thereafter be transmitted to the State Treasury and be placed in the General Fund and be appropriated out in such amounts that may be deemed necessary by the Legislature. In the administration of this enactment the Regular Departmental Appropriation Bill will be adopted.

**Expenditure of moneys**

Sec. 8c. The expenditure of any moneys under this Act shall never exceed the amount of money obtained from the collection of money required by any fee, permit, license or registration required by the provisions of this Act.

**Penalties**

Sec. 9. (a). Any person, who shall be convicted of violation of any of the provisions of this Act, or of the rules and regulations established thereunder, shall be sentenced to pay a fine of not less than Fifty (\$50.00) Dollars nor more than One Hundred (\$100.00) Dollars for each offense.

(b). Each day of violation shall constitute a separate offense.

**Sanitary premises**

Sec. 10. Every bedding manufacturer or renovator shall keep his place of business in a sanitary condition satisfactory to the Health Department, and failure to do so shall be sufficient cause to revoke his permit.

**Exceptions**

Sec. 11. The provisions of this Act shall apply to all bedding manufactured, repaired, renovated and/or sold after the effective date hereof; but the same shall not apply to bedding; which has been manufactured, repaired or renovated prior to the effective date hereof. Acts 1939, 46th Leg., p. 376.

Effective June 30, 1939.

Section 8a of the Act of 1939, made an appropriation of \$10,000 to carry out the purposes of the Act for the remainder of the fiscal year ending August 31, 1939.

Section 8b appropriated specific sums for salaries and expenses for the two year period from September 1, 1939 to August 31, 1941.

Section 12 read as follows: If any section, subsection, sentence, clause, phrase or word of this Act is, for any reason, held to be unconstitutional, such decree shall not affect the validity of any remaining portion of this Act.

Section 13 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act defining bedding to include mattresses, pillows, bolsters, feather beds, etc., requiring the labelling of bedding as to whether new or second-hand materials are used; prohibiting the use of materials from dump-grounds, junk yards and hospi-

tals; requiring the germicidal treatment of second-hand materials; authorizing the State Board of Health with enforcement; requiring permits for manufacture, repair or renovation and application of germicidal process; the payment of fees for permits; providing for the issuance of adhesive stamps and registration for selling bedding; providing that proceeds be placed in State Treasury in General Fund; making certain emergency appropriations; making appropriations for the biennium September 1, 1939, to August 31, 1941; providing expenditures under this Act shall never exceed revenues received from fees, etc., collected hereunder; providing for a penalty; requiring bedding manufacturers or renovators to keep premises sanitary; excepting all bedding manufactured, repaired, renovated and/or sold prior to effective date; providing that if any part of this Act shall be declared unconstitutional, it shall not affect any other part thereof; and declaring an emergency. Acts 1939, 46th Leg., p. 376.

## CHAPTER FOUR—SANITARY CODE

## Art. 4477. Sanitary code

Rule 41a. Death Without Medical Attendance. That in case of any death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification; provided that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided further, that if the registrar or the local health officer, as the case may be, has reason to believe that the death may have been due to unlawful acts or neglect, or otherwise is one properly referable to the coroner, he shall then refer the case to the coroner or other proper officer for his investigation and certification. And the coroner or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, if from external causes, (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death; provided, further that when a death of any person not a resident of that district, or unknown in that district, occurs, the Justice of the Peace or the person acting as coroner shall secure the finger prints of the deceased and the following physical marks of identification.

- (a) Color of hair.
- (b) Color of eyes.
- (c) Height.
- (d) Weight.
- (e) Deformities.
- (f) Tattoo marks.
- (g) Such other facts as set forth by the State Board of Health as will be of assistance in identifying the deceased.

The finger prints and the physical identification marks shall be placed on a form prescribed by the State Board of Health, and shall be attached to the death certificate. The State Registrar shall forward to the State Department of Public Safety the report showing the finger prints and other physical marks of identification. As amended Acts 1939, 46th Leg., p. 343, § 1.

Effective May 1, 1939.

Section 3 of amendatory Act of 1939 Act should take effect from and after its declared an emergency and provided that the passage.

Rule 47a. Contents of Birth Certificate. That the certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records;

(1) Place of birth, including State, county, precinct, town, or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words "Died unnamed." If the living

child has not yet been named, at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

(3) Sex of child.

(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child, in case of plural births.

(5) For plural births, number of each child in order of birth.

(6) Whether legitimate or illegitimate.

(7) Date of birth, including the year, month, and day.

(8) Full name of father.

(9) Residence of father.

(10) Color or race of father.

(11) Age of father at last birthday, in years.

(12) Birthplace of father; at least State or foreign country, if known.

(13) Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

(14) Maiden name of mother.

(15) Residence of mother.

(16) Color or race of mother.

(17) Age of mother at last birthday, in years.

(18) Birthplace of mother; at least State or foreign country, if known.

(19) Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

(20) Number of children born to this mother, including present birth.

(21) Number of children of this mother living.

(22) The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in item 7), and hour of birth, and whether the child was born alive or still-born. This certification shall be signed by the attending physician or midwife with date of signature and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent person, whose duty it shall be to notify the local registrar of such birth, as required by Section 13 of this Act.<sup>1</sup>

<sup>1</sup> Rule 46a.

(23) Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided.

(24) Whether prophylactic precautions were taken at time of birth to prevent ophthalmia neonatorum.

(25) And provided that the name of the father or any information by which he might be identified, shall not be written into the birth or death certificate of any illegitimate child, and provided further, that any statement the father of an illegitimate child wishes to make as to its parentage, may, when placed in the form of an affidavit, be attached to the original birth record. Neither the State Registrar nor any local registrar shall issue a certified copy of any birth or death certificate

wherein a child or an adult is stated to be illegitimate, unless such certified copy is ordered by a Court of competent jurisdiction.

(26) Provided further, upon entry of final order of adoption the Judge or Clerk of Court shall notify the Registrar of Vital Statistics in State Department of Health of action taken, giving the names and addresses of the natural parents, if known, or of the child's next kin, the date of birth and name of such child before and after adoption and the name and address of foster parents. Said Registrar of Vital Statistics shall likewise be notified of any subsequent revocation of such order of adoption or any annulment of adoption. Copies of all reports of adoptions and reports of revocation of order of adoption and of annulments shall within thirty (30) days after such order be mailed to the Registrar of Vital Statistics of the State Department of Health. Upon receipt of copy of any final order of adoption the State Registrar of Vital Statistics shall cause to be made a record of the birth in the new name or names of the adopting parents or parent. He shall then cause to be sealed and filed the original certificate of birth, if any, with the adoption decree of the Court and such sealed package may be opened only upon order of a Court of record. Upon receipt of copy of annulment of adoption, said Registrar of Vital Statistics shall restore the original name of the child and the names of his natural parents or parent to the record of birth of such child. Provided further that adoption made under existing law prior to the passage of this Act, may be registered with the Bureau of Vital Statistics upon sworn application of either adoptive parent or guardian of the adopted child, show the names and addresses of the natural parents, if known, or of the child's next kin, the date of birth and the name of such child before and after adoption, the names and addresses of foster parents, together with proof of adoption, either by certified copy of the record of the affidavit of adoption, or the Court order of adoption.

Upon the adoption of said child, the State Registrar shall notify the local registrar of that adoption, and shall forward to the local registrar a copy of the birth certificate showing the names of the parents by adoption, provided that no statement of the adoption shall appear on that record. The local registrar shall return to the State Registrar, or shall cancel the certificate of the natural birth of said child, and shall substitute in its place a certificate forwarded him by the State Registrar.

And provided further that the State Registrar, upon the written request signed by the parent, or parents, of the adopted child, may retain the certificate of the natural birth in the file and may attach a certificate showing the names of the parent, or parents, by adoption to the original certificate as an amendment. The State Registrar shall furnish the local registrar with a copy of the said birth certificate to be attached to the original birth certificate.

Upon the marriage of a mother of a child, or children, her husband may file with the local registrar the certificate of marriage, to which may be attached a birth certificate for each child showing the father's name and other data referring to him as the father of the child or children. When the local registrar is satisfied that the marriage has occurred and that the statements made on the birth certificate are true and correct, he shall place his file date and signature on the certificate and forward it to the State Bureau of Vital Statistics. The State Registrar shall attach the certificate as a correction to the certificate of the natural birth of the child; and provided further, that neither the State Registrar nor a local registrar shall, except where ordered by a Court of competent jurisdiction, make a certificate of, or furnish any information to any person as to the birth certificate of an illegitimate child, but shall issue

a certified copy of the birth certificate filed after the marriage of the mother of the child.

(27) Provided that the above provisions shall not, in any way, be construed as affecting the property rights of said husband, or said child, or children, and provided further that the above provisions shall not, in any way, be construed as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property. As amended Acts 1937, 45th Leg., p. 1289, ch. 480, § 1; Acts 1939, 46th Leg., p. 346, § 1.

Effective June 2, 1939.

Section 3 of the amendatory act of 1939 act should take effect from and after its declared an emergency and provided that the passage.

Rule 51a. Blanks and Registration Forms. That the State Department of Health shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall print and supply its local registrar, and each county shall print and supply the County Clerk with permanent record books, in form approved by the State Registrar, for the recording of all births and deaths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth or death, upon demand of the State Registrar in person, by mail, or through the local registrar; provided, that no certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this Act shall be altered or changed in any respect otherwise than by the amendments properly dated, signed, and witnessed. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the name of decedents, and in the case of births, by the names of fathers and mothers. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable, and dangerous to the public health, as decided by the State Department of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this State, such company, society, association or individual, may file such record, or a duly authenticated transcript thereof with the State Registrar, and it shall be the duty of the State Registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public,

subject to such reasonable conditions as the State Department of Health may prescribe. If any person desires a transcript of any record in accordance herewith, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of Ten (10) Cents per folio, Fifty (50) Cents per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of Twenty-five (25) Cents for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

And provided further, that any citizen of the State of Texas wishing to file the record of any birth or death, not previously registered, may submit to the Probate Court in the county where the birth or death occurred, a record of that birth or death written on the adopted forms of birth and death certificates. The certificate shall be substantiated by the affidavit of the medical attendant present at the time of the birth, or in case of death, the affidavit of the physician last in attendance upon the deceased, or the undertaker who buried the body. When the affidavit of the medical attendant or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. The Probate Court shall require such other information or evidence as may be deemed necessary to establish the citizenship of the individual filing the certificate, and the truthfulness of the statements made in that record. The Clerk of the said Court shall forward the certificate to the State Bureau of Vital Statistics with an order from the Court to the State Registrar that the record be, or be not, accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act.<sup>1</sup> Such certified copies shall be prima facie evidence in all Courts and shall furnish the forms upon which such records are filed, and no other places of the facts stated thereon. The State Bureau of Vital Statistics form shall be used for that purpose. As amended Acts 1939, 46th Leg., p. 346, § 1.

<sup>1</sup>Rule 54a.

Effective June 2, 1939.

Section 3 of the amendatory act of 1939 act should take effect from and after its declared an emergency and provided that the passage.

Rule 54a. Copies of Records. That the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of the record of any birth or death registered under provisions of this Act,<sup>1</sup> for the making and certification of which he shall be entitled to a fee of fifty cents (50¢), to be paid by the applicant. And any such copy of the record of a birth or death, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of fifty cents (50¢) for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the State Treasurer at the close of each month,

and all such fees shall be kept by the State Treasurer in a special and separate fund, to be known as the "Vital Statistics Fund," and the amounts so deposited in this Fund may be used for defraying expenses incurred in the enforcement and operation of this Act; and provided further, that the State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment; and provided further, that the United States Census Bureau may obtain, without expense to the State, transcripts or certified copies of births and deaths without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to enter into an agreement with the United States Bureau of the Census to act as special agent for that Bureau in accepting the use of the franking privilege and blanks furnished by that Bureau and is authorized to act as disbursing agent in order to have transcribed for that Bureau copies of the birth and death certificates filed with the State Bureau of Vital Statistics; and provided that the State Registrar shall issue free of cost to any veteran, his widow, orphan, or other descendants a photostatic copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the Government; and provided that the State Registrar may issue, upon court order, without fee, a certified copy of the birth certificate in cases relating to child labor, and the public schools. As amended Acts 1939, 46th Leg., p. 343, § 2.

<sup>1</sup>Rules 34a-55a; P.C. art. 781a.

Effective May 1, 1939.

Section 3 of the amendatory act of 1939 declared an emergency and provided that the

act should take effect from and after its passage.

## CHAPTER FIVE—COUNTY HOSPITALS

Art.

4493a. Validation of county hospital bond elections in counties containing large city [New].

4494b. Lease of county hospitals in counties of 30,900 to 31,000 population [New].

Art.

4494c. Construction, maintenance, and operation of hospitals by counties of 17,600 to 17,700 population; leasing of hospital [New].

4494d. Lease of county hospitals in counties of 23,825 to 23,850 [New].

4494e. Lease of county hospitals in counties of 7,680 to 7,700 [New].

### Article 4478. Authority

Acts 1939, 46th Leg., Spec.L., p. 850, reads as follows:

"Section 1. In all counties in this State having a population of not less than twelve thousand, one hundred ninety (12,190) inhabitants and not more than twelve thousand, one hundred and ninety-five (12,195) inhabitants, as shown by the last preceding Federal Census, a direct tax of not exceeding Ten (10¢) Cents on the One Hundred (\$100.00) Dollars assessed valuation may be authorized and levied by the Commissioners' Court of such county, for health purposes

generally, and specifically for the purpose of building, equipping and maintaining a hospital, employing physicians and all other necessary persons; purchasing medicine, supplies, etc. for the indigent people of such county.

"Sec. 2. No portion of the amount of money collected from such levy of taxes by the Commissioners' Court of any such county shall be spent for the benefit of any persons other than residents of such county."

Effective May 12, 1939.

### Art. 4493a. Validation of county hospital bond elections in counties containing large city

Section 1. In each instance where a county containing a city of not less than one hundred and fifty thousand (150,000) population, ac-



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

ording to the last preceding Federal Census, has held an election resulting favorably to the issuance of bonds for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a county hospital or sanitarium, or for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a city-county hospital or sanitarium, the act of the Commissioners Court in calling and noticing said election, the election, the act of the Commissioners Court in canvassing the returns of such election and declaring the results thereof, each and all are hereby expressly validated; all such bonds heretofore executed, approved by the Attorney General, registered by the Comptroller, sold and delivered, are hereby in all things validated; and all such bonds so voted but not heretofore sold, when they shall have been executed, approved by the Attorney General, and registered by the Comptroller, shall constitute valid and binding obligations of such county.

Sec. 2. Provided however, that this Act shall not affect any litigation pending at the time this Act becomes effective, in which the validity of any such election or bonds is being questioned. [Acts 1937, 45th Leg., 2nd C.S., p. 1920, ch. 37.]

Effective Oct. 19, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act validating county elections heretofore held for the issuance of bonds for hospital purposes, applicable only to such counties as contain a city having a population of not less than one hundred and

fifty thousand (150,000), according to the last preceding Federal Census; validating the actions of county officials and State officials in executing, approving, registering, selling, and delivering said bonds; providing that this Act shall not affect litigation pending at the time the Act becomes effective; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1920, ch. 37.]

#### Art. 4494b. Lease of county hospitals in counties of 30,900 to 31,000 population

Any county in this State having a population of not less than thirty thousand nine hundred (30,900) and not more than thirty-one thousand (31,000) according to the United States Census of 1930, shall have authority to lease any county hospital belonging to said county to be operated as a county hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court of said county and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court. [Acts 1937, 45th Leg., 1st C.S., p. 1754, ch. 9, § 1.]

Effective July 6, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing counties of a certain class according to population to lease any

county hospital of said county to be operated as a county hospital by the lessee; prescribing regulations relating to said subjects; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1754, ch. 9.]

#### Art. 4494c. Construction, maintenance, and operation of hospitals by counties of 17,600 to 17,700 population; leasing of hospital

Section 1. In any County in this State having a population of not less than seventeen thousand six hundred (17,600) or not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, in which are established hospitals or in which hospitals may be constructed, a direct tax of not over Ten Cents (10¢) on

the valuation of One Hundred Dollars (\$100.00) on all real and personal property within such County may be authorized and levied by the Commissioners' Court of such County for the purpose of erecting buildings and other improvements, equipping such hospital, and for maintaining and operating such hospital, provided that all such levy of taxes shall be submitted to the qualified tax paying voters of the County and a majority vote shall be necessary to levy such taxes.

Sec. 2. Any County in this State having a population of not less than seventeen thousand six hundred (17,600) and not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, shall have authority to lease any County Hospital belonging to said County now in existence or that may hereafter be constructed, to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court on leasing such hospital shall be evidenced by order of the Commissioners' Court which shall be recorded in the minutes of said Court. Acts 1939, 46th Leg., Spec.L., p. 851.

Effective Feb. 21, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the construction, maintenance and operation of hospitals in Counties having a population of not less than seventeen thousand six hundred (17,600) and not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930; providing for the levying of a direct tax

of not more than Ten Cents (10¢) on the valuation of One Hundred Dollars (\$100.00) by the Commissioners' Court, for the purpose of constructing, maintaining and operating such hospital; authorizing and empowering the Commissioners' Court to lease any County Hospital to be operated by the lessee under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 851.

Art. 4494d. Lease of county hospitals in counties of 23,825 to 23,850

Any county in this State having a population of not less than twenty-three thousand, eight hundred and twenty-five (23,825) and not more than twenty-three thousand, eight hundred and fifty (23,850) inhabitants according to the last preceding Federal Census of 1930, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court. Acts 1939, 46th Leg., Spec.L., p. 849, § 1.

Effective March 18, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing the Commissioners Court in any county having a population of not less than twenty-three thousand, eight hundred and twenty-five (23,825)

and not more than twenty-three thousand, eight hundred and fifty (23,850) inhabitants according to the last preceding Federal Census, to lease any county hospital belonging to said county, and providing for the terms for said lease; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 849.

Art. 4494e. Lease of county hospitals in counties of 7,680 to 7,700

Any county in this State having a population of not less than seven thousand, six hundred and eighty (7,680) and not more than seven thousand and seven hundred (7,700), according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to

said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court. Acts 1939, 46th Leg., Spec.L., p. 848, § 1.

Effective March 18, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing the Commissioners Court in any county having a population of not less than seven thousand, six

hundred and eighty (7,680) and not more than seven thousand and seven hundred (7,700) inhabitants, according to the last preceding Federal Census, to lease any county hospital belonging to said county, and providing for the terms for said lease; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 848.

## CHAPTER SIX—MEDICINE

Art.

4500a. Foreign nations, reciprocal arrangements with [New].

### Art. 4500. 5738 Reciprocal arrangements

The State Board of Medical Examiners may, in its discretion, upon payment by an applicant of a fee of Fifty Dollars (\$50), grant license to practice medicine to any reputable physician who is a citizen of the United States, and a graduate of a reputable medical college, or who has qualified on examination for a certificate of medical qualification for a commission in the Medical Corps of the United States Army or Navy, and to licentiates of other States or Territories having requirements for medical registration and practice equal to those established by the laws of this State. Applications for license under the provisions of this Article shall be in writing, and upon a form to be prescribed by the State Board of Medical Examiners. Said application shall be accompanied by a diploma, or a photograph thereof, awarded to the applicant by a reputable medical college, and, in the case of an Army or Naval officer, a certified transcript or a certificate, or license, or commission issued to the applicant by the Medical Corps of the United States Army or Navy, or by a license, or a certified copy of license to practice medicine, lawfully issued to the applicant, upon examination, by some other State or Territory of the United States. Said application shall also be accompanied by an affidavit made by an executive officer of the Medical Corps of the United States Army or Navy, the President or Secretary of the Board of Medical Examiners which issued the said license, or by a legally constituted medical registration officer of the State or Territory by which the certificate or license was granted, and on which the application for medical registration in Texas is based, reciting that the accompanying certificate or license has not been canceled or revoked, except by honorable discharge from the Medical Corps of the United States Army or Navy, and that the statement of the qualifications made in the application for medical license in Texas is true and correct. Applicants for license under the provisions of this Article shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced medicine in the State or Territory from which the applicant removed, was at the time of such removal in full force, and not suspended or canceled. Said application shall also state that the applicant is the identical person to whom the said certificate, license,

or commission, and the said medical diploma were issued, and that no proceeding has been instituted against the applicant for the cancellation of said certificate, license, or authority to practice medicine in the State or Territory by which the same was issued; and that no prosecution is pending against the applicant in any State or Federal court for any offense which under the law of Texas is a felony. A reputable physician within the meaning of this Article shall be one who would be eligible for examination by the Board of Medical Examiners under the provisions of Article 4505 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. A reputable medical college within the meaning of this Article shall be such as is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. It is provided, however, that the Board may, under the provisions of this Article, in its discretion, grant license to any reputable physician of another State, Territory, or District, who graduated prior to the year 1907 from a medical college which at the time of his graduation required only three (3) courses of instruction of not less than six (6) months each for attainment of its diploma, or the degree of Doctor of Medicine, and which at the time of his graduation was generally recognized by the medical examining boards of the States of the Union as maintaining entrance requirements and courses of instruction equal to those maintained by the then better class of medical schools of the United States; and provided further that the said applicant for license to practice medicine in this State shall appear before the Board in executive session and pass a satisfactory oral examination in practical subjects as may be prescribed by the Board. The said Board shall not, under the provision of this Article, grant a license to practice medicine in this State to an applicant who does not hold a license issued by another State, Territory, or District of the United States, giving to him the same right to practice medicine in the State, Territory, or District issuing said license which a license to practice medicine in this State gives to a physician of this State in Texas. As amended Acts 1939, 46th Leg., p. 352, § 1.

Effective March 14, 1939.

Section 2 of the amendatory Act added art. 4500a; sec. 3 amended art. 4501; secs. 4-8 amended arts. 4503-4507; and secs. 9, 10 amended Vernon's Pen.Code, arts. 740, 742.

Section 11 read as follows: "That in the event any section, or part of section, or provision of this Act, be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining sections, or parts of sections of the Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional, or inoperative section, or any part of section or provision, had not been included. In the event any penalty, right, or remedy created or given in any section or part of this Act is

held invalid, unconstitutional, or inoperative, this shall not affect the validity of any other penalty, right, or remedy created or given by either the whole Act, or in the section thereof containing such invalid, unconstitutional, or inoperative part; and if any exception to, or any limitation upon, any general provision herein contained shall be held to be unconstitutional or invalid, the general provision shall, nevertheless, stand effective and valid, as if the same had been enacted without such limitation or exceptions."

Section 12 repealed all conflicting laws. Section 13 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 4500a. Foreign nations, reciprocal arrangements with

The Board of Medical Examiners shall not, under the provisions of Article 4500, grant a license to practice medicine to any applicant whose authority to practice medicine in any other nation or country was granted by a nation or country, in which a similar law in reference to granting license to practice medicine under a reciprocal arrangement does not exist in favor of physicians of this State. Added Acts 1939, 46th Leg., p. 352, § 2.

Effective March 14, 1939.

## Art. 4501. 5739 Examination

All applicants for license to practice medicine in this State not otherwise licensed under the provisions of law must successfully pass an examination by the Board of Medical Examiners. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. Applicants to be eligible for examination must be citizens of the United States and must present satisfactory evidence to the Board that they are more than twenty-one (21) years of age, of good moral character, who have completed sixty (60) semester hours of college courses, other than in a medical school, which courses would be acceptable, at time of completing same, to the University of Texas for credit on a Bachelor of Arts Degree or a Bachelor of Science Degree, and who are graduates of bona fide reputable medical schools; a reputable medical school shall maintain a course of instruction of not less than four (4) terms of eight (8) months each; shall give a course of instruction in the fundamental subjects named in Article 4503 of the Revised Civil Statutes of Texas of 1925, as amended by this Act; and shall have the necessary teaching force, and possess and utilize laboratories, equipment, and facilities for proper instruction in all of said subjects. Applications for examination must be made in writing, verified by affidavit, and filed with the Secretary of the Board, on forms prescribed by the Board, accompanied by a fee of Twenty-five Dollars (\$25). All applicants shall be given due notice of the date and place of such examination. Provided further that all students regularly enrolled in medical schools whose graduates are now permitted to take the medical examination now prescribed by law in this State shall upon completion of their medical college courses be permitted to take the examination prescribed herein.

If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Board of Medical Examiners may fix, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe, upon the payment of such part of Twenty-five Dollars (\$25) as the Board may determine and state. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board may grant to the applicant a license to practice medicine. The Board shall determine the credit to be given examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereupon shall be final. As amended Acts 1939, 46th Leg., p. 352, § 3.

Effective March 14, 1939.

## Art. 4503. Details of examinations

All examinations for license to practice medicine shall be conducted in writing in the English language, and in such manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. All applicants shall be known to the examiners only by numbers, without names, or other method of identification on examination papers by which members of the Board may be able to identify such applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination conducted as aforesaid under the rules of the Board, applicants shall be granted license to practice medicine. All questions and answers, with

the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board and signed by all members of the Board, or a quorum thereof. The Board may in its discretion give examination for license in two (2) parts. The first part shall include such of the required scientific branches of medicine above-named as may be prescribed by the Board. The second, or final, part of the examination shall not be given until the applicant has graduated and has received a diploma from a reputable medical college, as the term, "reputable medical college," is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. The Board may in its discretion admit to partial examination applicants who have successfully completed the work of the first two (2) years of the college course required of licentiates. The application for partial examination must be in writing, accompanied by an affidavit made by the dean, or registrar, of a reputable medical college within the meaning of the law, showing that the applicant has successfully completed the work of the first two (2) years of said course, and by a fee of Fifteen Dollars (\$15). The Board may prescribe all other prerequisites of such applications. No license shall be granted to any applicant who has successfully passed such partial examination until all legal requirements for granting license have been complied with. All partial examinations must be conducted in the same manner and under the same rules prescribed for complete, or full, examination. The fee for second, or final, examination shall be Twenty-five Dollars (\$25). As amended Acts 1939, 46th Leg., p. 352, § 4.

Effective March 14, 1939.

For sections 2, 3, 5-13 of the amendatory Act of 1939 see notes under article 4500.

#### Art. 4504. 5742. Construction of this law

Nothing in this Chapter shall be so construed as to discriminate against any particular school or system of medical practice, nor to affect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided, further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members. The provisions of this Chapter do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by Statute; nor to nurses who practice nursing only; nor to duly licensed chiropodists, who confine their practice strictly to chiropody as defined by Statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract surgeons of the United States Army, Navy, or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of other States called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining, or treating patients. This law shall be so construed as to apply to persons other than registered pharmacists of this State not pretending to be physicians who offer for sale on the streets or other public

places contraceptives, prophylactics or remedies which they recommend for the cure of disease. As amended Acts 1939, 46th Leg., p. 352, § 5.

Effective March 14, 1939.

For sections 2-4, 6-13 of the amendatory Act of 1939, see notes under article 4500.

Art. 4505. 5743 May refuse to admit certain persons

The State Board of Medical Examiners may refuse to admit persons to its examinations, and to issue license to practice medicine to any person, for any of the following reasons:

(1) The presentation to the Board of any license, certificate, or diploma, which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

(2) Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or procuring or aiding or abetting the procuring of a criminal abortion.

(3) Habits of intemperance, or drug addiction, calculated, in the opinion of the Board, to endanger the lives of patients.

(4) Grossly unprofessional or dishonorable conduct, or a character which in the opinion of the Board is likely to deceive or defraud the public.

(5) The violation, or attempted violation, direct or indirect, of any of the provisions of this Act, either as a principal, accessory, or accomplice.

(6) The use of any advertising statement of a character tending to mislead or deceive the public.

(7) Advertising professional superiority, or the performance of professional service in a superior manner.

(8) The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use, any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma, in or incident to an application to the Board of Medical Examiners for license to practice medicine.

(9) Altering, with fraudulent intent, any medical license, certificate, diploma, or transcript of medical license, certificate, or diploma.

(10) The use of any medical license, certificate, diploma, or transcript of any such medical license, certificate, or diploma, which had been fraudulently purchased, issued, counterfeited, or materially altered.

(11) The impersonation of, or acting as proxy for, another in any examination required by this Act for a medical license.

(12) The impersonation of a licensed practitioner, or permitting, or allowing, another to use his license, or certificate to practice medicine in this State, for the purpose of treating, or offering to treat, sick, injured, or afflicted human beings.

(13) Employing, directly or indirectly, any person whose license to practice medicine has been suspended, or association in the practice of medicine with any person or persons whose license to practice medicine has been suspended, or any person who has been convicted of the unlawful practice of medicine in Texas or elsewhere.

Any applicant who may be refused admittance to examination shall have his right to have such issue tried in the District Court of the county in which he resides or in which any Board member resides. All orders of the Board shall be prima facie valid. As amended Acts 1939, 46th Leg., p. 352, § 6.

Effective March 14, 1939.

For sections 2-5, 7-13 of the amendatory Act of 1939 see notes under article 4500.

**Art. 4506. Revocation, cancellation or suspension of license**

The District Courts of this State shall have the right to revoke, cancel, or suspend the license of any practitioner of medicine upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Medical Examiners shall be authorized to refuse to admit persons to its examination, as provided in Article 4505 of the Revised Civil Statutes of Texas of 1925, as amended by this Act, and it shall be the duty of the several District and County Attorneys of this State to file and prosecute appropriate judicial proceedings for such revocation, cancellation, or suspension, in the name of the State, on request of the Board of Medical Examiners. As amended Acts 1939, 46th Leg., p. 352, § 7.

Effective March 14, 1939.

For sections 2-6, 8-13 of the amendatory Act of 1939, see note under article 4500.

**Art. 4507. Proceedings for revocation, cancellation, or suspension of license**

All judicial proceedings which shall be instituted by any District or County Attorney under the provisions of the last preceding Article shall be in writing, shall state the grounds thereof, and shall be signed officially by the prosecuting officer instituting the same. Citation thereon shall be issued in the name of the State of Texas, and in the manner and form as in other cases, and the same shall be served upon the defendant at least ten (10) days before the trial day set therein. Upon the return of said citation, executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial, and conducted in the name of the State of Texas against the defendant. The State shall be represented by the County or District Attorney. A jury of twelve (12) men shall be empaneled, unless waived by the defendant, and the cause shall be tried in like manner as other cases. If the said practitioner of medicine shall be found guilty, or shall fail to appear and deny the charge, after being cited as aforesaid, the said Court may, by proper order entered on the minutes, suspend his license for a time, or revoke and cancel it entirely; and may also give proper judgment for costs. As amended Acts 1939, 46th Leg., p. 352, § 8.

Effective March 14, 1939.

For sections 1-7, 9-13 of the amendatory Act of 1939 see note under article 4500.

**CHAPTER TEN—OPTOMETRY**

Art.

4566—1. Leasing space on percentage basis  
—Transferring accounts receivable [New].

**Art. 4553. Board of Examiners—Vacancies—Oath**

The Texas State Board of Examiners in Optometry shall be composed of six (6) members who shall possess the necessary qualifications to practice optometry, and who shall have been residents of this State actually engaged in the practice of optometry in this State for at least five (5) years immediately preceding their appointment, none of whom shall be members of the faculty of any college of optometry or agents of any wholesale optical company, or shall have a financial interest in any such college or company.



In case of death, resignation or removal of any members, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments. Each appointee to the Texas State Board of Examiners in Optometry shall, within fifteen (15) days from the date of his appointment, qualify by taking the constitutional oath of office. As amended Acts 1939, 46th Leg., p. 360, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 7 of the amendatory Act of 1939 repeals article 4560 and section 11 repeals article 4565b.

Section 14 read as follows: "In the event any word, clause, section or part of section or provision of this Act be held invalid, unconstitutional or inoperative, this shall not affect the validity of the remaining sections, or parts of sections of the Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative section or any part of section or provision, has not been included. In the event any penalty, right, or remedy created or given in any section or part of this Act is held invalid, unconstitutional, or

inoperative, this shall not affect the validity of any other penalty, right or remedy created or given by either the whole Act or in the section thereof containing such invalid, unconstitutional, or inoperative part; and if any exception to, or any limitation upon any general provision herein contained shall be held to be unconstitutional, or invalid, the general provision shall, nevertheless, stand effective and valid, as if the same had been enacted without such limitation or exception."

Section 15 repeals all conflicting laws and parts of laws.

Section 17 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 4555. Organization and meetings

The Board shall elect a President, a Vice-President and a Secretary-Treasurer at its first meeting after the appointment of a member of said Board. The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Not less than ten (10) days notice of such meetings shall be given by publication in at least three (3) daily newspapers of general circulation to be selected by the Board. Special meetings shall be held upon request of a majority of the members of the Board or upon the call of the President. Four (4) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present, provided such period shall not be longer than three successive days. As amended Acts 1939, 46th Leg., p. 360, § 2.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

#### Art. 4556. Record of proceedings—Powers of board—Proceedings before board—Enjoining violations—Bond of Secretary-Treasurer—Seal—License—Office

The Board shall preserve a record of its proceedings in a book kept for that purpose. A record shall be kept showing the name, age, and present legal and mailing address of each applicant for examination, the name and location of the school of optometry from which he holds credentials, and the time devoted to the study and practice of optometry, together with such information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. The Secretary of the Board shall on or before March 1st of each year send a certified copy of said record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary of said Board to the Secretary of State, shall be admitted as evidence in all courts. Every license and annual re-

newal certificate issued shall be numbered and recorded in a book kept by the Secretary of the Board. The Board shall have the power to make such rules and regulations not inconsistent with this law as may be necessary for the performance of its duties, the regulation of the practice of optometry and the enforcement of this Act. The Board shall have power to appoint committees from its own membership, the duties of such committees shall be to consider such matters, pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith, as shall be referred to said committees, and they shall make recommendations to the Board with respect thereto. The Board shall have the power to employ the services of stenographers, inspectors, and other necessary assistants in carrying out the provisions of this Act. The Board shall be represented by the Attorney General and the County and District Attorneys of the State. The Board, any committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. Before entering upon the discharge of the duties of his office, the Secretary-Treasurer of the Board shall give such bond for the performance of his duties as the Board may require, the premium of which is to be paid from funds in the possession of the Board. The Board shall adopt an official seal and license of suitable design and shall have an office where all of the permanent records shall be kept. As amended Acts 1939, 46th Leg., p. 360, § 3.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

#### Art. 4557. Examination—Application for—Schools considered reputable

Every person desiring to practice optometry in the State of Texas shall be required to pass the examination given by the Texas State Board of Examiners in Optometry. The applicant shall make application by presenting to the Secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school or has a preliminary education equivalent thereto permitting matriculation in The University of Texas, and that he has attended and graduated from a reputable university or college of optometry and which meets with the requirements of the Board, or has studied optometry not less than four consecutive calendar years in the office of an optometrist, licensed under this Act, and has the preliminary high school education provided for in this section, before beginning his studies, and provided that any person desiring to qualify in this manner shall file with the Board on blanks prescribed and furnished by the Board satisfactory proof, upon the beginning of his studies, as aforesaid, within thirty (30) days thereof, and full and complete satisfactory proof upon the completion of his studies within thirty (30) days thereof.

A university or school of optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by

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the better class of universities and schools of optometry and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each and approved by the Board. As amended Acts 1939, 46th Leg., p. 360, § 4.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

See resolution set out in note under art. 4559 as to application of this article to those who began study of optometry prior to effective date of act.

#### Art. 4558. Subjects of examinations

The examination shall consist of written, oral or practical tests, in practical, theoretical, and physiological optics, in theoretical and practical optometry, and in the anatomy, physiology and pathology of the eye as applied to optometry and in such other subjects as may be regularly taught in all recognized standard optometric universities or schools. As amended Acts 1939, 46th Leg., p. 360, § 5.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

#### Art. 4559. Examinations—Notice—Conduct of—Registration—License—Inapplicable to whom

Each applicant shall be given due notice of the date and place of examination. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given the same written examinations. Every candidate successfully passing the examination and meeting all requirements of the Board shall be registered by the Board as possessing the qualifications required by this law and shall receive from said Board a license to practice optometry in the State.

Provided that no provision of this section shall apply to any qualified person who in good faith began the study of optometry under the provisions of Chapter 51, Acts of the Thirty-seventh Legislature, First Called Session,<sup>1</sup> prior to the effective date of this Act, and who shall, within thirty (30) days after such effective date, register with the Secretary of the Board, under proper rules of the Board, satisfactory proof of the beginning of such study, together with such other related facts as the Board may require. Any person failing to register with the Secretary to the Board as herein provided shall be deemed to have waived all rights under the provisions of Chapter 51, Acts Thirty-seventh Legislature, First Called Session. As amended Acts 1939, 46th Leg., p. 360, § 6.

<sup>1</sup> This chapter.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

Acts 1939, 46th Leg., p. 849, read as follows:

"WHEREAS, House Bill No. 410 has passed the Legislature and is now in the Governor's Office; and

"WHEREAS, Section 6 contained a Senate amendment which read in part as follows: 'Provided that no provision of this section shall apply to any qualified person who in good faith began the study of optometry under the provisions of Chapter

51, Acts of the Thirty-seventh Legislature, First Called Session, prior to the effective date of this Act; and

"WHEREAS, It was the legislative intent that the word 'Act' should be used in lieu of the word 'section' in this provision; now, therefore, be it

"RESOLVED by the House of Representatives, the Senate concurring, That it was the intent of the Legislature that paragraph two (2) of Section 6 of House Bill No. 410 should be included in and pertain to Section 4 of House Bill No. 410."

Effective 90 days after June 21, 1939, date of adjournment.

Art. 4560. Repealed. Acts 1939, 46th Leg., p. 360, § 7. Effective 90 days after June 21, 1939, date of adjournment

Art. 4563. Refusal to license—Revocation or suspension of license—  
Grounds—Procedure—Reissuance—Deceased optometrist, carrying on practice of

The Texas State Board of Examiners may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted for any of the following reasons:

- (a) That said applicant or licensee is guilty of gross immorality;
- (b) That said applicant or licensee is guilty of any fraud, deceit or misrepresentation in the practice of optometry or in his seeking admission to such practice;
- (c) That said applicant or licensee is unfit or incompetent by reason of negligence;
- (d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;
- (e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;
- (f) That said licensee has directly or indirectly employed, hired, procured, or induced a person, not licensed to practice optometry in this State, to so practice;
- (g) That said licensee directly or indirectly aids or abets in the practice of optometry any person not duly licensed to practice under this Act;
- (h) That said licensee directly or indirectly employs solicitors, canvassers or agents for the purpose of obtaining patronage;
- (i) That said licensee lends, leases, rents or in any other manner places his license at the disposal or in the service of any person not licensed to practice optometry in this State;
- (j) That said applicant or licensee has wilfully or repeatedly violated any of the provisions of this Act.

Proceedings under this Article shall be begun by filing charges with the Board in writing and under oath. Said charges may be made by any person or persons. The President of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to practice, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the last date of the publication of the notice. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on his behalf, to cross examine witnesses and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits.

Any person whose license to practice optometry has been refused or has been revoked or suspended by the Board, may, within twenty (20) days after the making and entering of such order, take an appeal to any of the district courts of the county of his residence, but the de-

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cision of the Board shall not be stayed or enjoined except upon application to such district court after notice to the Board.

Upon application, the Board may reissue a license to practice optometry to a person whose license has been revoked but such application shall not be made prior to one (1) year after the revocation and shall be made in such manner and form as the Board may require.

Provided, however, that nothing in this law shall be construed to prevent the administrator or executor of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased during the administration of such estate nor to prevent a licensed optometrist from working for such person during the administration of the estate when the legal representative thereof has been authorized by the county judge to continue the operation of such practice. As amended Acts 1939, 46th Leg., p. 360, § 8.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

#### Art. 4565. Fees and expenses

The Board shall charge a fee of Twenty-five Dollars (\$25) for examining an applicant for license, which fee must accompany the application. If the applicant who because of failure to pass the examination be refused a license, he shall be permitted to take a second examination without additional fee, provided the second examination is taken within a period of two (2) years. The fee for issuing a license shall be Ten Dollars (\$10), to be paid to the Secretary of the Board. If anyone successfully passing the examination and meeting the requirements of the Board has not paid the fee for the issuance of a license within ninety (90) days after having been notified by registered mail at the address given on his examination papers or at the time of examination that he is eligible for same, such person shall, by his own act, have waived his right to obtain a license and the Board may, at its discretion, refuse to issue such license until such person has taken and successfully passed another examination.

The fund realized from all fees payable under the Act shall first be applied to the payment of all necessary expenses of the Board and the remainder to be applied by order of the Board to compensate members of said Board. Said compensation to each member of the Board shall in no case exceed Ten Dollars (\$10) per day, or Three Hundred Dollars (\$300) per year, exclusive of allowable expenses, except the Secretary-Treasurer shall receive additional compensation, as set by the Board, not to exceed Twelve Hundred Dollars (\$1200) per year, for the performance of such additional duties as Secretary-Treasurer. The total expense of the Board shall not exceed Six Thousand Dollars (\$6,000) per year. The Board shall defray all expenses under this law from fees provided in this title and no appropriation shall ever be made from the State Treasury for any expenditure made necessary by this law. All fees in excess of Five Thousand Dollars (\$5,000) remaining in the hands of the Board at the end of any fiscal year shall be paid into the General Fund of this State. As amended Acts 1939, 46th Leg., p. 360, § 9.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

#### Art. 4565a. Annual renewal fee—Certificate—Suspension or cancellation of license for nonpayment—Lost or destroyed license

On or before the 1st day of January of each year every licensed optometrist in this State shall pay to the Secretary-Treasurer of the Texas

State Board of Examiners in Optometry an annual renewal fee of Five Dollars (\$5) for the renewal of his license to practice optometry for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information from the records of the Board that said Board may deem necessary. When an optometrist shall have failed to pay his annual renewal fee by March 1st, it shall be the duty of the Board to notify such optometrist at his last known address by mail that said annual renewal fee is due and unpaid. Thirty (30) days after the date of mailing such notice, it shall be the duty of the Board under this Act to suspend the license for nonpayment of annual renewal fee and to notify such optometrist of such suspension by registered letter addressed to his last known address. The Board shall notify the county clerk of the county in which such license may have been recorded of such suspension and such clerk, upon receipt of notice from said Board, shall enter upon the Optometry Register of such county the fact that such license has been suspended for nonpayment of annual renewal fee and shall notify the Board in writing that such entry has been made. Provided, that if said annual renewal fee is not paid within sixty (60) days from the date of notice of suspension, and unless good cause is shown why such fee has not or cannot be paid, the Board shall then cancel such license. The Board shall notify the county clerk of the county in which such license may have been recorded of such cancellation and such clerk, upon receipt of such notice from said Board, shall enter upon the Optometry Register of such county the fact that such license has been cancelled and is void for nonpayment of annual renewal fee and shall notify the Board in writing that such entry has been made. Practicing optometry without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing optometry without a license. After the Board has declared a license void as provided for in this Article, the Board may thereafter, in its discretion, refuse to issue a new license until such optometrist whose license has been declared void for nonpayment of annual renewal fee has passed the regular examination for license as provided for by this Act.

If any license issued under this law shall be lost or destroyed, the holder of said license may present his application to the Board for a duplicate license, together with his affidavit of such loss or destruction, and that he is the same person to whom said license was issued, and other information required by the Board, and shall upon the payment of a fee of Two Dollars and Fifty Cents (\$2.50) be granted a license under this law. The Board may exercise its discretion in granting said duplicate license. As amended Acts 1939, 46th Leg., p. 360, § 10.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the amendatory Act of 1939, see article 4553.

Art. 4565b. Repealed. Acts 1939, 46th Leg., p. 360, § 11. Effective 90 days after June 21, 1939, date of adjournment

Art. 4566—1. Leasing space on percentage basis—Transferring accounts receivable

Provided that it shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable. Acts 1939, 46th Leg., p. 360, § 16.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the Act of 1939, see article 4553.

## CHAPTER ELEVEN—CHIROPODY

Art. 4568. State Board of Chiropody Examiners; appointment; terms of members; oath; bond of secretary-treasurer; meetings; regulations and by-laws; powers; records

The State Board of Chiropody Examiners shall consist of six (6) reputable practicing chiropodists who have resided in the State of Texas, and who have been actively engaged in the practice of chiropody for a period of five (5) years immediately preceding their appointment, none of whom shall be members of the faculty of any chiropody college, or the chiropody department of any medical college, or shall have a financial interest in such colleges. The term of office of each member of said Board shall be six (6) years, except as to the first Board appointed hereunder. Two (2) of its members shall serve for a period of two (2) years; two (2) of its members shall serve for a period of four (4) years; and two (2) of its members shall serve for a period of six (6) years. The respective terms of the first members so appointed shall be designated by the Governor so appointing them, within thirty (30) days after this Act becomes effective. The six (6) members of said Board shall be appointed by the Governor of this State, two (2) to serve two (2) years, two (2) to serve four (4) years, and two (2) to serve six (6) years, or until their successors have been appointed and qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of this State and he shall serve for a term of six (6) years, or until his successor shall be appointed and qualified. The members of the State Board of Chiropody Examiners shall, before entering upon the duties of their offices, qualify, by subscribing to, before a notary public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the constitutional oath of office. They shall, as soon as organized, and biennially thereafter in the month of January, elect from their number a president, vice-president and secretary-treasurer. The secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars (\$5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer; and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the State Board of Chiropody Examiners.

Said State Board of Chiropody Examiners shall hold meetings at least twice a year and special meetings when necessary at such times and places as the Board deems most convenient for applicants for examinations for license. Due notice of such meetings shall be given by publication in two (2) daily newspapers as may be selected by the Board. Special meetings shall be held upon request of a majority of the members of the Board, or upon the call of the president. Four (4) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present.

The Board shall adopt all reasonable or necessary rules, regulations, and bylaws, not inconsistent with this Act, the laws of this State, or of the United States, to govern its proceedings and activities, the

regulation of the practice of chiropody and the enforcement of this Act. The Board shall have power to appoint committees from its own membership, the duties of which shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to said committees, and to make recommendations to the Board with respect thereto; to employ the services of stenographers, inspectors, and other necessary assistants in the carrying out of the provisions of this Act. The Board, any committee, or any members thereof shall have the power to issue subpoenas and to compel the attendance of witnesses and the production of books, records, and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by the strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act or the regulations promulgated in accordance therewith, and in such connection a temporary injunction may be granted. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border shall contain the words, 'Texas State Board of Chiropody Examiners.' The secretary-treasurer of the Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, age, known place of residence, the name and location of the school of chiropody from which he holds credentials and the time devoted to the study and practice of the same, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. A certified copy of said record, with the hand and seal of the secretary of said Board, shall be admitted as evidence in all courts. Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary-treasurer of the Board. The records shall be kept by the secretary-treasurer of the Board, and such records shall be audited biennially during the month of January by a certified public accountant, a report of the findings of such audit shall be made to the Governor of this State, and a copy of said report shall be delivered to the secretary-treasurer of the Board, who shall retain same as a permanent record of the office.

The Board shall cause the prosecution of all persons violating any of the provisions of this Act and may incur the expense reasonably necessary in that behalf. As amended Acts 1939, 46th Leg., p. 368, § 1.

Effective July 11, 1939.

Section 8 of the amendatory Act of 1939 repeals all conflicting laws and parts of laws.

Section 9 reads as follows: "If any Article, section, subsection, sentence, clause, or phrase of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of any remaining portions of this Act. The Legislature hereby

declares that it would have passed this Act and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases are declared unconstitutional."

Section 10 declared an emergency and provided that the Act should take effect from and after its passage.



**Art. 4569. Examination; grades; fee; subjects; reexamination**

It shall be the duty of the Board to examine all applicants for license to practice chiropody in this State, and the Board shall examine and grade all papers submitted by such applicants and report to such applicants, within sixty (60) days from the date of any meeting of said Board, and said report shall give to such applicant the grades made by such applicant upon each and every subject upon which he or she was examined by said Board. Each person applying for examination shall pay to the Board a fee of Thirty-five Dollars (\$35) at least fifteen (15) days before the date set by the Board for the examination, and upon passing a satisfactory examination before said Board on subjects pertaining to chiropody, shall be granted a license to practice chiropody in this State. The subjects one must be examined in are anatomy, chemistry, dermatology, diagnosis, materia-medica, pathology, physiology, chiropody, bacteriology, and mechanical orthopedics, limited in their scope to the treatment of ailments of the human foot, and the examinations are to be written in the English language. Any applicant failing in the examination and being refused a license shall be entitled to a re-examination, at the next regular session of said Board within one year. Any applicant failing on re-examination shall be required to pay an additional fee and shall be required to be re-examined in all subjects. As amended Acts 1939, 46th Leg., p. 368, § 2.

Effective July 11, 1939.

For sections 8-10 of the amendatory Act of 1939 see article 4569.

**Art. 4570. Application for license**

All applicants for license to practice chiropody in this State, not otherwise licensed under the provisions of law, shall present satisfactory evidence to the State Board of Chiropody Examiners that such applicants have attained the age of twenty-one (21) years, are of good moral character and are free of all contagious and communicable diseases, and furnish a certified certificate of health to that effect, and are citizens of the United States of America and who are graduates of at least a sixteen (16) unit high school, whose credits are acceptable without condition for matriculation at the State University of the State in which applicant's high school graduation was attained. The applicant shall present satisfactory evidence of graduation from a bona fide reputable school of chiropody in the form of a diploma which has conferred the degree of Doctor of Surgical Chiropody, to the State Board of Chiropody Examiners. Such chiropody schools may be considered reputable, within the meaning of this Act, whose entrance requirements and course of instruction are as high as those adopted by the University of Texas, and whose course of instruction shall embrace at least four (4) terms of at least eight (8) months each, and which meets the requirements of the State Board of Chiropody Examiners. Provided, however, the Board may, in its discretion, accept applicants from chiropody schools whose course of instruction embraces at least three (3) terms of at least eight (8) months each; and provides for one term of eight (8) months instruction in a recognized college of liberal arts or sciences shall be approved by this Board. As amended Acts 1939, 46th Leg., p. 368, § 3.

Effective July 11, 1939.

For sections 8-10 of the amendatory Act of 1939 see article 4568.

**Art. 4571. Annual renewal fee; lost or destroyed license; display of license and certificate**

On or before the first day of September, 1939, and on or before September 1st of each succeeding year, every chiropodist licensed in

this State shall pay to the Secretary-Treasurer of the State Board of Chiropody Examiners an annual renewal fee of Ten Dollars (\$10) for the renewal of his license to practice chiropody for the current year. On receipt of said renewal fee the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information from the records of said Board that said Board may deem necessary. When a chiropodist shall fail to pay his annual renewal fee by March 1st, it shall be the duty of the Board of Chiropody Examiners to notify such chiropodist at his last known address, by mail, that said annual renewal fee is due and unpaid. Thirty (30) days after the date of mailing said notice, it shall be the duty of the Board under this Act to declare the license suspended or revoked for nonpayment of the annual renewal fee. The Board shall notify the district clerk of the county in which such license may have been recorded and such clerk, upon receipt of notification from said Board, shall enter upon the chiropody register of such county the fact that such license is suspended or revoked for nonpayment of the annual renewal fee, and shall notify the Board in writing that such entry has been made. Practicing chiropody without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and subject to all penalties of practicing chiropody without a license. After the Board has declared a license suspended or revoked, as provided for in this Act, the Board may thereafter in its discretion refuse to reinstate such license or issue a new license until such chiropodist, whose license has been declared suspended or revoked for nonpayment of annual renewal fee, has passed a regular examination for license, as provided for by this Act. If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may present his application to the Board for duplicate license, together with his affidavit of loss or destruction, and that he is the same person to whom said license was issued, and shall, upon the payment of a fee of Ten Dollars (\$10), be granted a license under this law. If the records of said Board fail to show that such person was ever licensed, the Board may exercise its discretion in granting said duplicate license.

Every person practicing chiropody in this State shall display the license and annual renewal certificate in a conspicuous place in the office wherein he practices chiropody and whenever required shall exhibit such license or certificate to the Board or its authorized representative. As amended Acts 1939, 46th Leg., p. 368, § 4.

Effective July 11, 1939.

For sections 8-10 of the amendatory act of 1939, see article 4568.

**Art. 4572. Registration fee; license to graduates of reputable colleges and to licentiates of other state; application**

The State Board of Chiropody Examiners may, in its discretion, upon payment by the applicant of a registration fee of One Hundred Dollars (\$100), grant a license to practice chiropody to any reputable chiropodist who is a graduate of a reputable college of chiropody, and to licentiates of other States or territories having requirements for chiropody registration and practice equal to those established by this law. Application for license, under provisions of this Act, shall be in writing and upon a form to be prescribed by the State Board of Chiropody Examiners. Said application shall be accompanied with a diploma or photograph thereof awarded to the applicant by a reputable college of chiropody lawfully issued to the applicant by some other State or territory, and also be accompanied by an affidavit from the President or

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Secretary of the Board of Chiropody Examiners who issued the said license, or by the legally constituted chiropody registration office of a State or territory in which the certificate or license was granted upon which the application for chiropody registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked and that the statement of qualifications made in the application for chiropody registration in Texas is true and correct. Applicants for license under provisions of this Act shall subscribe to an oath in writing, which shall be a part of said application stating that the license or certificate or authority under which the applicant practiced chiropody in the State or territory from which the applicant removed was, at the time of such removal, in full force and not suspended or cancelled. That the applicant is the identical person to whom said certificate or license or said chiropody diploma was issued and that no proceedings were pending at the time of such removal, or are at the present time pending, against the applicant for the cancellation of such certificate, license or authority to practice chiropody in the State or territory in which the same was issued, and that no prosecution was then or is at the time of the application pending against the applicant in any State or Federal Court for any offense, which, under the laws of Texas, is a felony. As amended Acts 1939, 46th Leg., p. 368, § 5.

Effective July 11, 1939.

For sections 8-10 of the amendatory Act of 1939, see article 4568.

## CHAPTER TWELVE—EMBALMING

Art.

4576a. Embalming Board [New].

### Art. 4576a. Embalming Board

Section 1. The State Board of Embalming shall consist of six (6) members who shall be licensed embalmers experienced in the business and in the care and disposition of dead human bodies. The members of said Board holding office at the time of the effective date of this Act shall continue to hold office for the duration of the terms for which they were appointed. Any vacancies existing on the Board at the time of the effective date of this Act shall be filled by the Governor of Texas subject to confirmation by the Senate, and the Governor shall thereafter have the power to fill vacancies on the Board as they occur, and shall in appointing said members so designate their terms that two (2) places on the Board shall become vacant each two (2) years. The term of office of each member shall be six (6) years. All appointments shall be confirmed by a two-thirds vote of the Senate of Texas. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. The Governor may, after hearing, remove any member of said State Board of Embalming for neglect of duty, incompetency or fraudulent or dishonest conduct. Each person appointed to said Board shall be furnished by the Governor with a certificate of appointment upon which it shall be noted that the appointee has taken the official oath provided by the Constitution.

Sec. 2. The State Board of Embalming is hereby granted the powers and there is imposed upon it the duties provided in Articles 4577 to 4582, inclusive, Revised Civil Statutes of Texas, 1925, and in Chapter 287, Acts of the Regular Session of the Forty-fourth Legislature,<sup>1</sup> and said Board shall have the powers and perform the duties provided for

by said Statutes and other Acts that hereafter may be passed relating to the powers and duties of said Board. Acts 1939, 46th Leg., p. 375.

1 Article 4582a and Pen.Code, art. 762a.

Effective 90 days after June 21, 1939, date of adjournment.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the establishment of a State Board of Embalming, providing for

the appointment and terms of the members thereof and for their removal, granting powers and imposing duties upon said Board; and placing the appointive power of the members of the Board in the Governor, with the approval of the Senate; and declaring an emergency. Acts 1939, 46th Leg., p. 375.

## CHAPTER FOURTEEN—GROUP HOSPITAL SERVICE [NEW]

Art.

4590a. Nonprofit corporations for group hospital service—incorporation.

Art. 4590a. Nonprofit corporations for group hospital service—incorporation

Section 1. That from and after the passage of this Act, any seven (7) or more persons, a majority of whom are superintendents of hospitals or physicians or surgeons licensed by the State Board of Medical Examiners, upon application to the Secretary of State of the State of Texas for a corporate charter may be incorporated for the purpose of establishing, maintaining and operating a nonprofit hospital service plan, whereby hospital care may be provided by said corporation through an established hospital or hospitals, and sanitariums with which it has contracted for such care, as is hereinafter defined.

### Applications

Sec. 2. That such corporations when organized shall be authorized to accept applicants, who may become members of said corporations furnishing group hospital service under a contract, which shall entitle each member to such hospital care for such period of time as is provided therein; and that such corporations shall be governed by this Act and shall not be construed as being engaged in the business of insurance under the laws of this State. That such corporations organized and operated under the provisions of this Act shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this Act and the provisions of Title 78 of the Revised Civil Statutes of Texas of 1925, are hereby declared inapplicable to corporations organized and/or operated under this Act.

### Corporations to be nonprofit organizations

Sec. 3. That said corporations shall be governed and conducted as nonprofit organizations for the sole purpose of offering and furnishing hospital service to its members in consideration of the payment by such members of a definite sum for the hospital care so contracted to be furnished. The necessary expenses of administering the affairs of said corporations may be paid from the dues or payments collected. Provided not more than fifteen per cent (15%) of all dues or payments received may be used for expenses of administering the affairs of said corporation, subject to the authorization or approval of the Board of Insurance Commissioners of Texas.

**Authority of corporations to contract**

Sec. 4. That such corporations shall have the authority to contract with hospitals charging for services rendered, in such manner as to assure to each person holding a contract of said corporation the furnishing of such hospital care as may be agreed upon in the contract between said corporation and said member, with the right to said corporation to limit in said contract the types of disease for which it shall furnish hospital care.

**Prohibition against contracting for medical services**

Sec. 5. That such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, but said corporation shall confine its activities to rendering hospital service only through such type of hospitals with whom it has contracts, without restricting the right of the patient to obtain the services of any licensed doctor of medicine.

**Personnel of directors**

Sec. 6. That at least a majority of the directors of such corporation must be at all times directors, superintendents or trustees of hospitals, which have contracted or may contract with such corporation to render its subscribers hospital service.

**Supervision**

Sec. 7. That such corporation shall, before accepting applications for membership in said nonprofit hospital service plan, submit to the State Insurance Commission a plan of operation, together with a schedule of its dues to be charged and the amount of hospital service contracted to be rendered; which plan shall first be approved by the Insurance Commission as fair and reasonable before said corporation shall engage in business.

**Approval of rates**

Sec. 8. That the Insurance Commission shall likewise approve the rates of payment to be made by said corporations to hospitals for the rendering of hospital care to the members of said corporation as being reasonable and just. Said hospitals shall guarantee the benefits of the certificates of membership issued by the corporation.

**Membership certificates**

Sec. 9. That every such corporation shall issue to its members certificates of membership, set forth the contract between the corporation and the member, and the period of such service, and the rate per day or week payable by said corporation for hospital service rendered to said member at any hospital other than the hospitals with which said corporation shall have contracted.

**Bond of treasurer**

Sec. 10. That the treasurer of such corporation shall be required to give a fidelity bond with corporation surety in such sum as may be determined by the officers of said corporation for the faithful handling of the funds of said corporation and all funds collected from members or subscribers of said corporation shall be deposited to the account of said corporation in a bank, which is a State depository.

**Finance procedure**

Sec. 11. That said corporations shall not pay any of the funds collected from members or subscribers to any hospital until after said hospitals

shall have rendered the necessary hospital care to such subscriber or member.

#### Reports to insurance commission

Sec. 12. That every such corporation shall annually on or before the first day of March file in the office of the Insurance Commission a statement verified by at least two (2) of the principal officers of said corporation, showing its condition on the 31st day of December then next preceding. The report to the Commission shall include an itemization of all expenses incurred for the period shown in the report, which expenses shall be in all things approved by said Commission. If the Commission finds any expense item unnecessary or unreasonable it shall make necessary rules eliminating same and the Commission is expressly authorized and empowered to provide for the expenses to be incurred and the amounts which must be within the limits provided for in this Act.

Sec. 13. No officer or director of the corporation shall receive any salary, wages or commissions but shall be allowed reasonable and necessary expenses for any meetings of the corporation which shall not exceed five (5) during any calendar year. No compensation shall be paid to any employee in excess of Six Thousand Dollars (\$6,000) per year. All salaries to be approved by the Board of Insurance Commissioners.

#### Examination of books and records

Sec. 14. That every such corporation shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the Insurance Commission annually, the expense of such examination to be borne by said corporation.

#### Dissolution

Sec. 15. That any dissolution or liquidation of any such corporation subject to the provisions of this Act shall be under the supervision of the Insurance Commission. In case of dissolution of any group formed under the provisions of this Act, certificate holders of such group shall be given priority over all other claims except cost of liquidation. Acts 1939, 46th Leg., p. 123.

Effective May 10, 1939.

Section 16 of the Act of 1939 amended article 1302 adding subd. 104 thereto.

Sec. 17 provided that if any article, section, subsection, sentence, clause or phrase of this Act is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity of any remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases are declared unconstitutional.

Sec. 18 provided that all laws or parts of laws in conflict with this Act are hereby de-

clared inapplicable to any and all corporations chartered and operated under this Act.

Section 19 declared an emergency and provided that the act should take effect from and after its passage.

#### Title of Act:

An Act to provide for the chartering of nonprofit corporations to be organized for the purpose of furnishing group hospital service, and to provide for the methods of operation, regulation and supervision of such corporations and of their contracts; providing exemption from Title 78 of the Revised Civil Statutes of 1925; and declaring an emergency. Acts 1939, 46th Leg., p. 123.

## TITLE 73—HOTELS AND BOARDING HOUSES

### Art. 4595. Sale to satisfy lien

The keeper of the inn, boarding house, or hotel shall retain such baggage and other property upon which he has a lien for a period of thirty (30) days, at the expiration of which time if such lien is not satisfied,

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

he may sell such baggage or other property at public auction, first giving ten days' notice of the time and place of sale by posting at least three (3) notices thereof in public places in the county where the inn, hotel, or boarding house is situated and also by mailing a copy of such notice to said guest or boarder at the place of residence shown on the register of such inn or hotel, if shown. After satisfying the lien and any costs that may accrue, the residue shall on demand, within sixty (60) days be paid such guest or boarder. If not demanded within sixty (60) days, from date of sale, such residue shall be deposited by such keeper with the treasurer of the county in which said hotel, inn, or boarding house is located, accompanied with a sworn true and correct statement. Such residue shall be retained by the County Treasurer and if not claimed within one year by the owner thereof, such Treasurer shall pay the same into the State Treasury, and it shall be placed to the credit of the escheat fund. As amended Acts 1939, 46th Leg., p. 383, § 1.

Effective 90 days after June 21, 1939, date of adjournment. declared an emergency and provided that the act should take effect from and after its passage.

Section 2 of the amendatory act of 1939

## TITLE 75—HUSBAND AND WIFE

### CHAPTER THREE—RIGHTS OF MARRIED WOMEN

Art. 4617. 4621, 2967, 2851 When wife may convey, etc.

If the husband be insane or shall have permanently abandoned his wife, or shall refuse to join in such encumbrance, conveyance or transfer of such property, the wife may apply to the district court of the county of her residence, and the court, in term time or vacation, upon satisfactory proof that such encumbrance, conveyance or transfer would be advantageous to the interests of the wife, shall make an order granting her permission to make such encumbrance, conveyance or transfer without the joinder of her husband, and she may then encumber, convey or transfer said property without such joinder.

In event the wife is a non-resident, she may apply to the district court of the county where the property, or a portion thereof, is situated, and the court shall hear and determine such application and grant relief the same as if the applicant were a resident of this State. As amended Acts 1937, 45th Leg., p. 1343, ch. 499, § 1.

Effective June 11, 1937. the Act should take effect from and after its passage.  
Section 3 of the amendatory Act of 1937 declared an emergency and provided that

Art. 4626. Application to be feme sole

Any married woman, with the consent of and joined by her husband, may apply by written petition addressed to the district court of the county in which she may desire to transact business for judgment or orders of the said court removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes; such petition shall set out the causes which make it to the advantage of said married woman to be so declared feme sole, and shall be filed and docketed as in other cases, and at any time thereafter the district court may, in term time, take up and hear said petition and evidence in regard thereto. If upon a hearing of said petition and evidence relating thereto, it appears to the court that it would be to the advantage of the woman applying, then said court shall enter its decree declaring said married woman feme sole for mercantile or trading purposes, and

thereafter she may, in her own name, contract and be contracted with, sue and be sued, and all of her separate property not exempt from execution under the laws of Texas shall thereafter be subject to her debts and liable under execution therefor, and her contracts and obligations shall be binding on her. As amended Acts 1937, 45th Leg., p. 1343, ch. 499, § 2.

Effective June 11, 1937.

## TITLE 76—INJUNCTIONS

### 2. IN PARTICULAR CASES

#### Art. 4667. 4685-93 Gaming and disorderly houses

The habitual use, actual, threatened or contemplated, of any premises, place or building or part thereof, for any of the following uses shall be enjoined at the suit of either the State or any citizen thereof:

1. For gaming or keeping or exhibiting games prohibited by law.
2. For keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, as those terms are defined in the Penal Code.
3. For carrying on bucket shops as defined in the Penal Code, or the habitual use by or permitting to remain in any such bucket shop, any telegraph or telephone wires or instruments, under circumstances prohibited by the Penal Code.
4. For the voluntary engaging in a fight between a man and a bull for money or other thing of value, or for any championship, or upon result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged either directly or indirectly, as prohibited by the Penal Code.

Any person who may use or be about to use, or who may aid or abet another in the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney General or any District or County Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of. As amended Acts 1937, 45th Leg., p. 664, ch. 331, § 1.

Effective 90 days after May 22, 1937,  
date of adjournment.

Section 2 of the amendatory Act of 1937

declared an emergency and provided that  
the Act should take effect from and after  
its passage.



## TITLE 78—INSURANCE

Chap.

22. Provisions Applicable to Certain Specified Companies [New].

## CHAPTER ONE—COMMISSIONER OF INSURANCE

## [Art. 4682b. Fixing rate of automobile insurance]

Section 1. Every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's or other insurer, hereinafter called insurer, writing any form of motor vehicle insurance in this State, shall annually file with the Board of Insurance Commissioners, hereinafter called Commissioner, on forms prescribed by the Commissioner, a report showing its premiums and losses on each classification of motor vehicle risks written in this State. The Commissioner shall have the sole and exclusive power and authority, and it shall be its duty to determine, fix, prescribe, and promulgate just, reasonable and adequate rates of premiums to be charged and collected by all insurers writing any form of insurance on motor vehicles in this State, including fleet or other rating plan, designed to discourage losses from fire and theft and similar hazards and to take account of the peculiar hazards of individual risks, and an experience rating plan designed to encourage the prevention of accidents, and to take account of the peculiar hazards of individual risks, provided that only one such plan shall be fixed or promulgated for each form of insurance hereunder. Said Commissioner shall have the authority also to alter or amend any and all of such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same or any part thereof. Said Commissioner shall have authority to employ clerical help, inspectors, experts, and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law; provided, however, that the number of employees and salary of each shall be fixed in the General Appropriation Bill passed by the Legislature. Said Commissioner shall ascertain as soon as practicable the annual insurance losses incurred under all policies on motor vehicles in this State, make and maintain a record thereof, and collect such data as will enable said Commissioner to classify the various motor vehicles of the State according to the risk and usage made thereof, and to classify and assign the losses according to the various classes of risks to which they are applicable; the Board shall also ascertain the amount of premiums on all such policies for each class of risks, and maintain a permanent record thereof in such manner as will aid in determining just, reasonable and adequate rates of premiums.

Motor vehicle or automobile insurance as referred to in this Act shall be taken and construed to mean every form of insurance on any automobile or other vehicle hereinafter enumerated and its operating equipment or necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use in this State of any automobile, motorcycle, motor-bicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, but excluding every motor vehicle running only upon fixed rails or tracks. Workmen's Compensation Insurance is excluded from the foregoing definition and from the terms of this Act. [As amended Acts 1937, 45th Leg., p. 671, ch. 335, § 1.]

Amendment of 1937, effective May 15,  
1937.

Sec. 11-a. The State of Texas shall assess and collect an additional one-fifth of one per cent of the gross motor vehicle insurance premiums, of all insurers writing motor vehicle insurance in this State, according to the reports made to the Board of Insurance Commissioners as required by law. The tax herein required shall supercede the tax heretofore collected upon fire premiums of automobile insurance for the support of the Board of Insurance Commissioners. Said taxes when collected shall be deposited with the State Treasurer to the credit of a special fund to be designated as the Motor Vehicle Insurance Division Fund, to be used for the sole purpose of administering this Act; and to be expended only on warrants issued by the Comptroller upon vouchers drawn by the Board of Insurance Commissioners, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this Section of this Act. Should there be an unexpended balance at the end of any year in said fund, the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the Treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the Motor Vehicle Division of the Board of Insurance Commissioners. [Acts 1927, 40th Leg., p. 373, ch. 253, § 11-a, as added Acts 1937, 45th Leg., p. 671, ch. 335, § 2.]

Effective May 15, 1937.

Effective 90 days after March 16, 1927, date of adjournment. Section 12 of said Acts 1927, 40th Leg., p. 373, ch. 253, being a penal provision is published as art. 571a, Penal Code. Section 13 provides that if any

part is held invalid, such holding shall not affect the remainder. Acts 1927, 40th Leg., p. 329, ch. 224, §§ 1-7, abolish the Commissioner of Insurance and confer his duties on the Board of Insurance Commissioners.

[Art. 4690a. Expenses of examinations; disposition of sums collected]

The expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the Chairman of the Board of Insurance Commissioners or under his authority shall be paid by the corporations examined in such amount as the Chairman of the Board of Insurance Commissioners shall certify to be just and reasonable.

Assessments for the expenses of such domestic examination, which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Act, shall be made by the Chairman of the Board of Insurance Commissioners upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected only at the time such examinations are made.

All sums collected by the Chairman of the Board of Insurance Commissioners, or under his authority, on account of the cost of examinations assessed as hereinabove provided for shall be paid into the State Treasury to the credit of the Insurance Examination Fund; and the salaries and expenses of the actuary of the Board of Insurance Commissioners and of the examiners and assistants, and all other expenses of such examinations, shall be paid upon the certificate of the Chairman of the Board of Insurance Commissioners by warrant of the Comptroller drawn upon such fund in the State Treasury.

If at any time it shall appear that additional pro-rata assessments are necessary to cover all of the expenses and disbursements required by law and necessary to comply with this Act, the same shall be made,

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments in the proportion assessed so that there shall be so assessed and collected the funds necessary to meet such expenses and disbursements and no more.

In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Chairman, and shall consist of the examiners' remuneration and expenses, and the other expenses of the Department of Insurance properly allocable to the examination. Payment shall be made directly to the Chairman, and all money collected by assessment on foreign companies for the cost of examination shall be deposited in the State Treasury by the Chairman to the credit of the Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher of the Chairman of the Board of Insurance Commissioners, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Chairman; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Chairman shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine. As amended Acts 1939, 46th Leg., p. 385, § 1.

Effective May 13, 1939.  
Section 3 of the amendatory Act of 1939  
declared an emergency and provided that

the Act should take effect from and after  
its passage.

[Art. 4690b. Appointment of examiners and assistants and actuary by  
Board of Insurance Commissioners; salaries]

The Chairman of the Board of Insurance Commissioners shall appoint such number of examiners, one of whom shall be the chief examiner, and such number of assistants as he may deem necessary for the purpose of making on behalf of the State of Texas and of the Board of Insurance Commissioners all such examinations of insurance companies, at the expense of such companies or corporations, as are required to be made or provided for by law; and, after this Act shall take effect he shall also appoint an actuary to the Board of Insurance Commissioners to advise the Board in connection with the performance of its duties and for aid and advice and counsel in connection with all such examinations required by law. Such examiners and assistants shall, as directed by the Chairman of the Board of Insurance Commissioners, perform all the duties relative to all examinations provided by law to be made by the Board of Insurance Commissioners of the State of Texas, and it is the purpose of this Act to provide for the examination hereunder by the Chairman of the Board of Insurance Commissioners of all corporations, firms or persons engaged in the business of writing

insurance of any kind in this State whether now subject to the supervision of the Insurance Department or not.

All such examiners and assistants and such actuary shall hold office subject to the will of the Chairman of the Board of Insurance Commissioners and the number of such examiners and assistants may be increased or decreased from time to time to suit the needs of the examining work. The actuary and all such examiners and assistants shall be paid out of the Insurance Examination Fund, such salaries as shall be fixed from time to time by the Legislature, and their necessary traveling expenses shall be paid out of said fund upon sworn, itemized accounts thereof, to be rendered monthly and approved by the Chairman of the Board of Insurance Commissioners before payment.

Where the Chairman of the Board shall deem it advisable he may commission the actuary of the Board, the chief examiner, or any other examiner or employee of the Department, or any other person, to conduct or assist in the examination of any company not organized under the laws of Texas and allow them compensation as herein provided, except that they may not be otherwise compensated during the time they are assigned to such foreign company examinations. Other than as thus provided, neither the actuary of the Board of Insurance Commissioners nor any examiner or assistant shall continue to serve as such if, while holding such position, he shall directly or indirectly accept from any insurance company any employment or pay or compensation or gratuity on account of any service rendered or to be rendered or any account whatsoever. Acts 1931, 42nd Leg., p. 252, ch. 152, § 3aa, as amended Acts 1939, 46th Leg., p. 385, § 2.

Effective May 13, 1939.

Section 3 of the amendatory Act of 1939 declared an emergency and provided that

the Act should take effect from and after its passage.

## CHAPTER TWO—INCORPORATION OF INSURANCE COMPANIES

### Art. 4705. 4711, 3034, 2916 Items of capital stock

The capital stock of any such insurance company, except any writing Life, Health, and Accident Insurance, shall consist:

1. In lawful money of the United States; or
2. In the bonds of this State or any county or incorporated town or city thereof, or in the stock of any national bank; or
3. In first mortgages upon unincumbered real estate in this State, the title to which is valid, and the market value of which is not less than forty (40) per cent more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for not less than sixty (60) per cent of the value thereof, with loss clause payable to such company. Provided, that the provisions of this Article, with respect to the value of real estate, compared to the amount loaned thereon, shall not apply to loans secured by real estate which are insured by the Federal Housing Administrator. As amended Acts 1939, 46th Leg., p. 394, § 1.

Effective May 23, 1939.

Section 2 of the amendatory Act of 1939 repeals art. 5006 and section 3 declared an

emergency and provided that the Act should take effect from and after its passage.

### Art. 4706. 4712, 3035, 2917 Investments of Funds

No company, except any writing Life, Health, and Accident Insurance, organized under the provisions of this Chapter shall invest its funds over and above its paid-up capital stock in any other manner than as follows:

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

(a) In bonds of the United States or of any of the States of the United States provided such bonds are, at the time of purchase, interest-bearing or not in default.

(b) In bonds or first liens on unincumbered real estate in this State or in any other State, country, or province in which such company may be duly licensed to conduct an insurance business, and providing in each instance such real estate shall be worth at least forty (40) per cent more than the amount loaned thereon. The value of such real estate shall be determined by a valuation made under oath by two (2) freeholders of the county where the real estate is located, and if the buildings are considered a part of the value of the real estate, they must be insured against loss by fire for not less than sixty (60) per cent of the value thereof, with loss-payable clause to such company.

(c) In bonds or other interest-bearing evidence of indebtedness of any county, incorporated city, town, or school or sanitary or navigation district, such navigation district to contain a population of not less than three hundred and fifty-nine thousand (359,000) according to the last preceding Federal Census, in this or any other State in which said company may be duly licensed to conduct an insurance business, if such evidences of indebtedness are issued by authority of law and if interest upon them has never been defaulted.

(d) In the stocks or bonds or other evidences of indebtedness of any solvent dividend-paying corporation incorporated under the laws of this State, or of the United States, or of any State, country, or province in which such company may be duly licensed to conduct an insurance business.

(e) In loans upon the pledge of any mortgage, stock, or bonds, or other evidence of indebtedness, acceptable as investments under the terms of this law if the current value of such mortgage, stock, bonds, or other evidence of indebtedness is at least twenty-five (25) per cent more than the amount loaned thereon.

(f) That the restrictions contained in Subsection (b) hereof that such real estate shall be worth not less than forty (40) per cent of the amount loaned thereon, and that the value of such real estate shall be determined by a valuation made under oath by two (2) freeholders of the county where the real estate is located and if buildings are considered as a part of the value of such real estate they must be insured for the benefit of the mortgagee, shall not apply to loans secured by real estate in Texas which are insured by the Federal Housing Administrator.

(g) In interest-bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40, Acts of the Forty-third Legislature, Second Called Session.<sup>1</sup> As amended Acts 1939, 46th Leg., p. 394, § 1.

<sup>1</sup> Article 2603d.

Effective May 23, 1939.

For sections 2 and 3 see notes under art. 4705.

Act authorizing investment of funds in stock of Federal Home Loan Bank see art. 881a-69.

## CHAPTER THREE—LIFE, HEALTH AND ACCIDENT INSURANCE

### Art. 4725. [4734] May invest in what securities

A life insurance company organized under the laws of this State may invest in or loan upon the following securities, and none others, viz:

1. It may invest any of its funds and accumulations in the bonds of the United States or of any State, county, or city of the United States; or in any bonds, or interest bearing warrants issued by authority of law

by any county, city, town, school district or other municipality or subdivision or by any educational institution of the State of Texas which is now or hereafter may be constituted or organized under the laws of this State, and is authorized to issue such bonds and warrants under the Constitution and laws of this State, provided legal provision has been made by a tax to meet said obligations, or in the bonds and warrants of any educational institution of the State of Texas, or any municipally owned water system or sewer system when special revenues to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such municipality or educational institution; or in any paving certificates issued by any city in the State of Texas and secured by a first lien on real estate; or in bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,<sup>1</sup> when such bonds are issued against and secured by promissory notes or obligations, the payment of which is secured by mortgage, deed of trust or other valid lien upon unencumbered real estate situated in this State; or in first mortgage bonds on real or personal property of any solvent corporation, and which has not at any time defaulted in the payment of interest on any of its obligations, but in no event shall the amount of such investment in the bonds of any one such corporation exceed five (5%) per cent of the admitted assets of the insurance company making the investment; or in interest bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40, Acts of the Forty-third Legislature, Second Called Session.<sup>2</sup>

2. It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in. It may also make loans upon first liens upon real estate, the title to which is valid and the value of which is forty (40%) per cent more than the amount loaned thereon; or upon first liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration; provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years; or upon any obligation secured collaterally by any such first liens. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least fifty (50%) per cent of the value thereof with loss clause payable to such company. It may also make loans upon the security of or purchase of its own policies. No loans on any policy shall exceed the reserve value thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property, or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property; but the disposition of its property shall be at all times within the control of its Board of Directors; provided that the provisions of this subdivision as to the value of the real estate compared to the amount loaned thereon and as to the duration of such loan shall not apply to loans secured by real estate which are insured under the provisions of Title II of the "National Housing Act", enacted by Congress of the United States and approved by the President June 27, 1934.<sup>3</sup>

3. Any life insurance company of the State, for the purpose of investing its surplus or any part thereof, over and above the amount of its

reserves and capital stock, may purchase and hold as collateral security, or otherwise, and sell and convey the capital stock, bonds, debentures, bills of exchange or other commercial notes or bills and securities of any solvent dividend paying corporation which has not defaulted in the payment of any of its obligations for a period of five (5) years, the current market value of which such stock, bonds, debentures, bills of exchange, or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty (50%) per cent more than the sum loaned thereon; provided that no such company shall loan or invest in its own stock, nor more than five (5%) per cent of the amount of its capital and surplus in the stock of any corporation, and provided further that no such company shall invest any of its funds in any stock on account of which the holders or owners thereof may in any event, be or become liable to any assessment except for taxes, nor in the stock of any oil company or manufacturing company unless such corporation has capital stock of not less than Five Million (\$5,000,000.00) Dollars and unless such corporation has paid dividends for a period of five (5) years and has not defaulted in the payment of any of its debts for a period of five (5) years.

That in any case in which a life insurance company organized under the laws of this State, shall reinsure the business and take over the assets of another life insurance company, either domestic or foreign, all investments of such reinsured company that were authorized, when made, by the laws of the State in which it was organized, as proper securities for investment of the funds of a life insurance company, and which are taken over by such reinsuring company, shall be considered as valid securities of such reinsuring company under the laws of this State, provided such investments are approved by the Board of Insurance Commissioners of this State, and same are taken over on terms satisfactory to said Board; and upon the condition that the Board of Insurance Commissioners shall have the power to require the reinsuring company to dispose of such investments upon such notice as it may deem reasonable. As amended Acts 1937, 45th Leg., p. 330, ch. 168, § 1; Acts 1939, 46th Leg., p. 397, § 1.

<sup>1</sup> 39 Stat. 360.

<sup>2</sup> Article 2603d.

<sup>3</sup> 12 U.S.C.A. §§ 1707-1715.

Effective May 3, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

## CHAPTER FOUR—TEXAS SECURITIES AND GROSS RECEIPTS TAX

### Art. 4766. [4776] "Texas securities"

The term "Texas Securities," as used in this Chapter, shall be held to include all bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,<sup>1</sup> when such bonds are issued against and secured by promissory notes or other obligations the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this State; bonds of the State of Texas; bonds or interest bearing warrants of any county, city, town, school district, or other municipality or subdivision, which is now or may hereafter be constituted or organized and authorized to issue such bonds or warrants under the Constitution and laws of this State; notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator; promissory notes and other obligations, the payment of which is secured by a mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this State, the title to which real estate is valid and the market value of which is double the amount loaned thereon,

exclusive of buildings, unless such buildings are insured against fire and kept insured in some company authorized to transact business in this State, and the policy or policies transferred to the company taking such mortgage or lien; obligations secured collaterally by such first lien notes; first mortgage bonds of any solvent corporation incorporated under the laws of this State and doing business in this State, and which has paid, out of its actual earning, dividends of an average of at least five (5) per cent per annum on the par value of all of its par value stock outstanding and on the sale value of all of its no par value stock outstanding for a period of at least five (5) years next preceding the date of such investment, and which has not at any time defaulted in the payment of interest on any of its obligations, any such investment in the bonds of any one such corporation not to exceed five (5) per cent of the admitted assets of the insurance company making the investment; and loans made to policyholders on the sale security of the reserve values of their policies. The investments required by this Chapter may be made by the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase, at its reasonable market value, of such office building already constructed and the ground upon which the same is located, in any city of the State of more than four thousand (4000) inhabitants. All real estate owned by life insurance companies in this State, on December 31, 1909, and all thereafter acquired under the provisions of this Chapter, or by foreclosure of a lien thereon, shall be treated, to the extent of its reasonable market value, as a part of the investment required by this Chapter. And "Texas Securities" shall be held to include every character of investment authorized by the terms of this Article; provided that the above restrictions concerning mortgage loans shall not apply to loans insured by the Federal Housing Administrator. [As amended Acts 1937, 45th Lég., p. 419, ch. 214, § 1.]

<sup>1</sup> 39 Stat. 360.

Became law without Governor's signature April 26, 1937.

Section 2 of the amendatory Act of

1937, declared an emergency making the Act effective on and after its passage. It did not record the Governor's approval.

#### Art. 4769. [4779] Reports showing gross receipts.

Each life insurance company not organized under the laws of this State, transacting business in this State, shall annually, on or before the 1st day of March, make a report to the Commissioner, which report shall be sworn to by either the president or vice president and secretary or treasurer of such company, which shall show the gross amount of premiums collected during the year ending on December 31st, preceding, from citizens of this State upon policies of insurance. Each such company shall pay annually a tax equal to three and three-fourths ( $3\frac{3}{4}$ ) per cent of such gross premium receipts. When the report of the investment in Texas securities, as defined by law, of any such companies as of December 31st of any year shall show that it has invested on said date as much as thirty (30) per cent of its total Texas reserves as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust, or other lien on Texas real estate and/or in loans to residents or citizens of Texas secured by the legal reserve on the respective policies held by such borrowers, the rate of occupation tax shall be reduced to three and one fourth ( $3\frac{1}{4}$ ) per cent; and when such report shall show that such company has so invested on said date as much as sixty (60) per cent of its total Texas reserve, the rate of such tax shall be reduced to two and nine-tenths (2.9) per cent; and when such report shall show that such company has so invested, on said date, as much as seventy-five (75) per cent of its total Texas reserve, the rate of such tax shall



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be reduced to two and five-tenths (2.5) per cent. All such companies shall, in any event, make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such taxes shall be for and on account of the business transacted within this State during the calendar year in which such premiums were collected, or for that portion thereof during which the company shall have transacted business in this State. This Act shall not in any manner affect the obligation for the payment of any taxes that have accrued and that are now due or owing, but the obligation as now provided by law for the payment of such taxes shall continue in full force and effect. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 5c; Acts 1937, 45th Leg., p. 525, ch. 258, § 1c.]

Amendment of 1937, effective May 4, 1937.

## CHAPTER FIVE—ASSESSMENT OR NATURAL PREMIUM COMPANIES

Art.

4782a. Repeals [New].

4782b. Application of act [New].

Art.

4782c. Taxation of premium receipts of foreign assessment life and casualty companies on reorganization or amendment of charter [New].

Art. 4782. [4792] Foreign mutual assessment life insurance companies; report of premiums or assessments; occupation tax in lieu of other taxes

Section 1. Each and every foreign mutual assessment life insurance company doing business in the State of Texas under the provisions of Chapter 5, Title 78, Revised Civil Statutes of Texas, 1925, shall file with the Board of Insurance Commissioners of Texas not earlier than the first day of January of each year nor later than the first day of March of each year, a report duly sworn to by two principal officers of such company. Such report shall be in addition to any and all other reports required by the laws of Texas to be filed by such companies, and shall contain the exact amount of money received by such companies from its Texas policyholders by way of premiums and/or assessments.

Sec. 2. There is hereby imposed upon such companies a tax of one (1) per cent of the gross amount of the receipts of such companies in Texas from premiums and/or assessments, as shown by the report provided for in Section 1 hereof. Such tax shall be paid by each and every such company in the manner as provided in Section 4 hereof.

Sec. 3. Upon the receipt of the report provided in Section 1 hereof the Board of Insurance Commissioners shall immediately certify to the State Treasurer the amount of taxes due by each of said companies.

Sec. 4. Each and every such company shall immediately pay to the State Treasurer the amount of tax due as shown by the certificate of the Board of Insurance Commissioners. Upon collection of the tax herein imposed upon such companies, the State Treasurer shall immediately certify such fact to the Board of Insurance Commissioners.

The tax herein imposed shall constitute an occupation tax and no company included in the provisions shall receive a license or certificate to do business in Texas for the year following March 1st of each year unless and until said tax has been paid.

Sec. 5. The tax herein imposed upon the companies herein included shall constitute all taxes and license fees collectable under the laws

of this State except the fee provided for under Article 3920, Revised Civil Statutes of Texas, 1925, Section 1, Regular Session, and no other taxes shall be collected or levied against such companies by any county, city, or town except State, county, and municipal ad valorem taxes on personal and real property of such companies. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1913, ch. 33, § 1.]

Effective Nov. 1, 1937.

Section 4 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

This article prior to the amendment of 1937 constituted a part of chapter 5 of the Revised Civil Statutes of 1925, which was

repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18, as amended 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1 (see article 4860a—18). The repealing section, however, provided that the repeal should not apply to or affect any company or association doing business under the laws repealed at the time of such repeal.

#### Art. 4782a. Repeals

All laws or parts of laws of this State in conflict herewith are hereby expressly repealed; however, it is hereby expressly provided that no part of Acts of 1929, First Called Session, Forty-first Legislature, Chapter 40,<sup>1</sup> as amended Acts 1929, Forty-first Legislature, Second Called Session, Chapter 60 or Senate Bill No. 81, Acts of the Regular Session of the Forty-fifth Legislature,<sup>2</sup> shall in any manner be affected by the terms hereof. Acts 1937, 45th Leg., 2nd C.S., p. 1913, ch. 33, § 2.

<sup>1</sup> Articles 4860a—1 to 4860a—19; P.C. art. 1117a.

<sup>2</sup> Article 4858a.

Effective date and emergency section. See notes under article 4782 of this title.

#### Art. 4782b. Application of act

It is expressly provided that nothing herein is to authorize the Board of Insurance Commissioners to issue a permit to do business in Texas to any foreign mutual assessment life insurance company that is not now doing business here. It is the intention of this Act to regulate and levy a tax on those companies that are now doing business here. [Acts 1937, 45th Leg., 2nd C.S., p. 1913, ch. 33, § 3.]

Effective date and emergency section. See notes under article 4782 of this title.

#### Art. 4782c. Taxation of premium receipts of foreign assessment life and casualty companies on reorganization or amendment of charter

That if any foreign assessment life or casualty company now licensed to do business in this State under the provisions of Chapter V, Title 78, Revised Civil Statutes of Texas, 1925, as amended by Senate Bill No. 37, Chapter 40, Acts of 1929, First Called Session, Forty-first Legislature, as amended by Senate Bill No. 106, Chapter 60, Acts of 1929, Second Called Session, Forty-first Legislature,<sup>1</sup> shall hereafter reorganize, amend its charter or otherwise change its plan of operation so that it shall no longer be subject to the provisions of said Chapter and the other laws then applicable to such companies, it shall thereafter, as to all policies written before such change, be governed and taxed as provided by the particular laws under which it operated and was taxed at the time of such change, but as to all policies thereafter written it shall be governed and taxed under the laws to which it has then become subject by such change. Acts 1939, 46th Leg., p. 424, § 1.

<sup>1</sup>Article 4860a—18.

Filed without the Governor's signature, June 9, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for taxing the premium receipts of foreign assessment life and casualty companies now admitted to do business in Texas, under Chapter V, Title 78, Revised Civil Statutes of Texas, 1925, as

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amended by Senate Bill No. 37, Chapter 40, Acts of 1929, First Called Session, Forty-first Legislature, as amended by Senate Bill No. 106, Chapter 60, Acts of 1929, Second Called Session, Forty-first Legislature, in the event any such company should hereafter reor-

ganize, amend its charter or otherwise change its plan of operation so that it shall not be subject to the provisions of said Chapter V, Title 78, Revised Civil Statutes of Texas, as amended, and declaring an emergency. Acts 1939, 46th Leg., p. 424.

## CHAPTER EIGHT—FRATERNAL BENEFIT SOCIETIES

Art.

4858a. Exemption from taxation of fraternal benefit societies [New].

### Art. 4858. Taxation

Except as to premium on gross receipt taxes levied by this Article or other provisions of laws of this State, fraternal benefit societies organized or licensed under this Chapter are hereby declared to be exempt from all and every State, county, municipal and school district taxes other than taxes on real estate and office equipment when same is used for other than lodge purposes, inasmuch as such societies are charitable and benevolent institutions.

Each fraternal benefit society not organized under the laws of this State but transacting business in this State shall, when it makes its annual report to the Commissioner, make a report, which shall be sworn to by two executive officers of the society, showing the total amount of premiums or contributions made to the society for or on account of its policies or beneficial certificates, providing for death or other disability benefits, during the year ending December 31st, preceding, for or on the lives of citizens of this State. Each such society or association shall pay annually at the time of making such report, an occupation tax equal to three and three-quarter per cent (3.75%) of such total contributions. At the time of making the report, as above required, each society or association shall also file a report showing the amount of the reserve accumulated and on hand with respect to its beneficial certificates on the lives of citizens or residents of this State. Each society or association shall also show in such report the amount it has invested in Texas securities as that term is defined in Chapter 4, Title 78, Revised Civil Statutes, 1925, and amendments thereto. When such report shall show that on December 31st, preceding, such society or association had invested as much as thirty per cent (30%) of the reserves above mentioned in promissory notes or other obligations secured by mortgage, deed of trust or other lien on Texas real estate and/or in loans to Texas citizens or residents secured solely by the legal reserve on the respective policies or certificates held by such borrowers, the rate of such tax shall be reduced to three and one-quarter per cent (3.25%) and when such report shall show that as much as sixty per cent (60%) of such reserve has been so invested the rate of such tax shall be reduced to two and nine-tenths per cent (2.9%), and when such report shall show that as much as seventy-five per cent (75%) of such reserve has been so invested the rate of such tax shall be reduced to two and one-half per cent (2.5%). No such society or association shall receive a license or permit to do business for the year in which such tax is due until same has been paid. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 5d.]

Effective Oct 31, 1936.

See article 4858a for similar provisions.

**Art. 4858a. Exemption from taxation of fraternal benefit societies**

Every fraternal benefit society organized or licensed under the provisions of Chapter 8 of Title 78 of the Revised Civil Statutes of Texas, is hereby declared to be a charitable and benevolent institution, and all of the funds of such fraternal benefit society shall be exempt from all and every state, county, district, municipal and school tax, including occupation taxes, other than taxes on real estate and office equipment when used for other than lodge purposes. Acts 1937, 45th Leg., p. 16, ch. 14, § 1.

Effective March 1, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

See article 4858 for similar provisions.

**Title of Act:**

An Act declaring all fraternal benefit societies, organized or licensed under the provisions of Chapter 8, of Title 78 of the Revised Civil Statutes of Texas, to be

charitable or benevolent institutions and exempting the funds of all such fraternal benefit societies from all and every state, county, district, municipal and school tax, including occupation taxes, other than taxes on real estate and office equipment when same is used for other than lodge purposes; and declaring an emergency. [Acts 1937, 45th Leg., p. 16, ch. 14.]

**Art. 4859f. Mutual assessment life insurance corporations**

**Sec. 6. Examination.** In addition to the annual report required by said House Bill No. 303,<sup>1</sup> the Life Insurance Commissioner shall, once in every two (2) years or oftener if he deems it advisable, require the books, records, accounts, and affairs of any corporation or association qualifying and acting under said Act to be examined and audited by an accountant or accountants or examiner designated and commissioned by him. For the purpose of any examination, the Commissioner and the auditors and examiners shall have free access to all books, records, papers, and accounts of the corporation; and the cost for the time required in making such examination and audit and all necessary expenses in connection therewith shall be paid by the corporation upon presentation of a bill showing the charges made by the department, which shall include the salaries, traveling expenses, hotel bills, and other expenses of such auditors and/or examiners, together with all other expenses in connection with such examination. Each corporation or association shall be charged with the salary of the auditors and examiners for the time required in making such examination and the time required in connection with going to and coming from the place or places necessary in connection with such examination, together with all expenses incurred by such auditors and/or examiners, and in addition thereto such corporation or association shall be charged by the Commissioner with an amount equal to the salaries of the actuary, examination clerk or clerks, stenographers, and all other employees employed in connection with the examination work in the department for the time said employees are performing duties in connection with the examination of each corporation so examined. The amounts so collected shall be paid into the Examination Fund of the State Treasury Department and paid out in accordance with the general examination laws.

The Commissioner or his deputy or any examiner shall have the right to require any officer, agent or employee of any company or association operating under this law, or any other person to be sworn and to answer under oath any questions regarding the affairs or activities of said association or company, and the Commissioner, his deputy and/or any examiner or auditor is hereby authorized to administer such oath. It shall be the duty of the Commissioner to require any corporation, person, firm, association, local mutual aid association, or any local association, company or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If,

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in any event, any such company, person, firm, association, corporation, local aid association or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Commissioner to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provisions of this Act shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation or individual, and which are not operated for profit and which pay no commissions to any one and whose operating expenses do not exceed One Hundred Dollars (\$100) per month; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the first day of March thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners. All such organizations shall have twelve (12) months from and after the effective date of this Act in which to comply with its provisions and conditions. If any organization fails to qualify under this Act or fails to comply with its requirements in any manner, it shall be the duty of the Board of Insurance Commissioners to report the same to the Attorney General who shall at the request of the said Board file such suit as may be necessary to wind up the affairs of such association and if necessary have a receiver appointed for that purpose. The venue of such suit shall be laid in the District Court of Travis County, Texas, providing, however, that any organization, association, corporation, acting under the provisions of this Act and organized thereunder, who, because of lack of time to complete said organization have failed to comply with the provisions of House Bill No. 893,<sup>2</sup> may be reinstated and have their rights and status thereof renewed and extended, provided they qualify by complying with the terms, requisites, and conditions of this Act within the time prescribed hereinabove. As amended Acts 1937, 45th Leg., p. 522, ch. 257, § 1; Acts 1939, 46th Leg., p. 414, § 1.

<sup>1</sup>This article.

<sup>2</sup>This section.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1937 reads as follows: "All laws or parts of laws requiring permits or certificates of authority for associations which limit their membership to the employes and the families of employes of any particular designated firm, corporation, or individual and which are not operated for profit and which pay no commissions to anyone and whose operating expenses do not exceed One Hundred Dollars (\$100) per month are hereby expressly repealed."

Section 2 of the amendatory Act of 1939 read as follows: "All laws or parts of laws

with reference to the examination of organizations operating under House Bill No. 303, Acts of the Forty-third Legislature and amendments thereof, as above set out, in conflict with this Act are hereby expressly repealed."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Part of this section, exempting from its provisions any corporation, association or partnership, individual or joint stock company engaged in the undertaking business, or to any advertising corporation, association and/or partnership, individual, or joint stock company with whom they have contracts, is repealed by Acts 1939, 46th Leg., p. 401, § 22, see Article 5068c, § 22.

## CHAPTER NINE—MUTUAL INSURANCE COMPANIES

Art.

4860a—20. County Mutual Insurance Companies; definitions [New].

## Art. 4860a—17. Taxes and fees

This article, in so far as it relates to payment of taxes, was repealed by Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 4, § 5a, and Acts 1937, 45th Leg., p. 525, ch. 258, § 1a. Effective Oct. 31, 1936.

## Art. 4860a—20. County Mutual Insurance Companies; definitions

Section 1. County Mutual Insurance Companies are companies organized for the purpose of insurance on the mutual or cooperative plan against loss or damage by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.

Unless they are restricted by their charters, they may write insurance against said hazards:

(a) On both rural and urban dwellings and attendant out-houses and yard buildings and all their contents for home and personal use—including family vehicles, musical instruments and libraries;

(b) On barns and other farm, dairy, truck garden, hennery and ranch buildings and improvements of every description;

(c) On all vehicles, harness, implements, tools and machinery of every kind and description used on and about farms, truck gardens, dairies, henneries or ranches;

(d) On all fruits and products, other than growing crops, and all fowls, domestic animals and livestock of every description, produced, raised, grown, kept or used on truck gardens, henneries, farms, ranches and dairies; and

(e) On church houses, country school houses, country lodge rooms and country recreation halls, other than road houses and public dance halls and their contents.

**Formation of company**

Sec. 2. Any number of bona fide inhabitants, not less than twenty-five, residing in any one or more adjoining counties in this State, who each own insurable property in such counties of the value of not less than One Thousand (\$1,000.00) Dollars, who desire to have the same insured for a sum not less than said amount, and have applied in writing for insurance on the same in the company, may form a County Mutual Insurance Company, and have the same incorporated under the laws of the State of Texas.

**Application for permission to solicit insurance**

Sec. 3. Any five or more of such inhabitants, desiring to form a County Mutual Insurance Company, may apply to the Board of Insurance Commissioners of the State of Texas for permission to solicit insurance on mutual or cooperative plan, which application shall state:

(a) The name of the company, which name shall include the words "County Mutual Insurance Company";

(b) The locality of the principal business of such company;

(c) The kind of insurance business the company proposes to engage in;

(d) The names and places of residence of not less than five persons making such application;

(e) An affidavit of at least one of said applicants correctly stating the names and residences of such applicants.

Upon receipt of such application, together with a Ten (\$10.00) Dollar fee for filing of same, the Board of Insurance Commissioners shall at once file it and issue a permit (for a period of six months), authorizing said applicant or applicants to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application, but not to issue policies of insurance or pay losses. Such permit may be renewed as often and as long as the Board of Insurance Commissioners finds it necessary upon application therefor and upon payment of Five (\$5.00) Dollars for each renewal. Moneys collected from applicants other than charter members shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

#### **Charter and articles of incorporation; contents**

Sec. 4. The charter and articles of incorporation of a county mutual insurance company shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, and be acknowledged before a notary public by not less than five (5) of them.

It shall also state the name of the company, which shall include the words "County Mutual Insurance Company", the place of its principal office; the number, names and post office addresses of its first Directors, the number never to be less than five; and such other provisions as the incorporators may desire to set out therein.

#### **Conditions of incorporation**

Sec. 5. Before a charter shall be granted a county mutual insurance company, the incorporators must have on hand:

(a) Not less than twenty-five (25) applications in writing for insurance on not less than one hundred (100) separate risks; provided that no one risk shall be for more than one per cent (1%) of the total amount of insurance applied for in the new company, and that a separate risk shall be one or more items of real and/or personal property which is not exposed to any other property on which insurance is applied for in the new company;

(b) Not less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance applied for at the time of incorporation, in cash or in approved legal assets, and in addition thereto a like amount of written valid extra premium or assessment obligations; provided the cash or legal assets required may be advanced by one or more persons and may be secured by the legal assets of the company—other than the assets so advanced; and

(c) Said application for charter shall also be accompanied by a copy of the by-laws of the company, and the bond of the Secretary or Manager of the same in such sum and conditioned as the Directors may determine.

When the foregoing requirements have been complied with to the satisfaction of the Commissioner of Insurance, the Commissioner of Insurance, upon the payment of a fee of Fifty (\$50.00) Dollars, shall issue such Company a charter to do business as an incorporated company.

#### **By-laws**

Sec. 6. The by-laws shall state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

They shall also fix the liability of the policy-holders for all losses accrued while the policies are in force, in addition to the regular premium or assessments for the same; and the time and manner of the payment of such liability; provided that the amount of such liability shall never be less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance in such policy; and provided further that such liability shall be a part of the assets of the Company and in the statement of the assets and liabilities of the Company shall be listed separately as "contingent liability of policy-holders".

County Mutual Companies may adopt all rules, regulations, provisions and requirements contained in the standard policies of companies writing fire, gas explosion, lightning, windstorm or hail insurance as promulgated from time to time by the Commission of Insurance of the State of Texas, insofar as they are applicable to County Mutual Insurance Companies, as a part of their by-laws and contracts of insurance, which adoption shall be evidenced either by statement to that effect in the by-laws or in the policies.

The by-laws may also provide that when a loss occurs, the Companies may, at their option provide and require that all or a certain percent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed, provided such provision may be equally made applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homestead and exempt personal property. Provided also that County Mutual Companies may in their by-laws provide that the requirements of Article 4929, Revised Civil Statutes 1925 shall not be applicable to their contracts of insurance.

#### **Premiums and assessments**

Sec. 7. All premiums and assessments, including the contingent liability of policy-holders for all insurance written by County Mutual Insurance Companies shall be fixed, levied and paid as and when required by the by-laws of the Companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remains the property of the insured.

If default is made by a policy-holder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home County of the Company and the Company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee in a sum of not less than Five (\$5.00) Dollars.

#### **Policy holders liabilities**

Sec. 8. Policy-holders shall be liable for losses of the Company only as prescribed in the by-laws of the Company, and that only in proportion that the premiums or assessments for the insurance of any policy bear to the total amount of the premiums or assessments for all the insurance in the class to which the policy belongs.

#### **Directors power to borrow**

Sec. 9. The Board of Directors of County Mutual Insurance Companies may, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge



the assets of the Company including the contingent liability of the policy-holders for such losses as security for such loans.

#### **Solvency**

Sec. 10. A County Mutual shall be considered solvent and entitled to continue business if its assets, including the contingent liability of its policy-holders for its losses, are reasonably sufficient to pay its losses, according to the terms of the policies.

If there are unpaid losses after all the assets of the Company have been exhausted, and a rehabilitation of the Company is not effected within six months after the exhaustion of such assets, then the Attorney General of the State shall at the request of the Commission of Insurance of the State, bring suit in the District Court in and for Travis County to cancel the charter of such Company.

#### **Directors; qualifications; term**

Sec. 11. Directors of County Mutual Insurance Companies shall hold their office for one year after their election, and until their successors qualify, unless otherwise provided in their by-laws.

Only bona fide policy-holders who carry insurance on their property in an amount not less than One Thousand (\$1,000.00) Dollars each in a Company, shall be eligible to become or remain Directors of the same. When a Director reduces his said insurance below such amount, he shall no longer be qualified to act as such Director.

#### **Charter to prescribe power of directors**

Sec. 12. The Board of Directors of County Mutual Insurance Companies shall have such discretion, power and authority as their charter shall provide.

#### **Voting by policy holders**

Sec. 13. Each policy-holder in a County Mutual Insurance Company shall be entitled to only one vote in all policy-holders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.

#### **Meetings**

Sec. 14. The meetings of the policy-holders of County Mutual Insurance Companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing Directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third of the Directors of the Company, or the Commissioner of Insurance of the State of Texas.

#### **Location of business**

Sec. 15. A County Mutual Insurance Company may write insurance (a) in any County adjoining the County in and for which it is organized, or (b) in any County in which no County Mutual Insurance Company has been organized, or (c) anywhere, if its reserve fund, or policy-holders contingent liability, or both such reserve fund and contingent liability taken together, exceeds the sum of Fifty Thousand (\$50,000.00) Dollars.

#### **Reserve funds**

Sec. 16. The Board of Directors of County Mutual Insurance Companies may provide for the accumulation of reserve funds, to be invested in such securities as the reserve funds of other Insurance Companies are by law required to be invested.

**Annual reports to policy holders and Commissioner of Insurance**

Sec. 17. County Mutual Insurance Companies shall annually make and submit written reports to their policy-holders showing (a) the rate and total amount of premiums or assessments paid during the year for their insurance, (b) the operating expenses, (c) and the names of the claimants and the amounts paid each for the losses suffered; and send each policy-holder a copy of such report as and when prescribed in the by-laws of the Company; provided, however, that it shall not be necessary to report the names and amounts of claims of policy-holders of one class of insurance to the policy-holders in another class, unless the policy-holders in such other class are liable for the losses of the former class.

They shall also make such reports annually to the Commission of Insurance of the State of Texas as the Commission may require of them, or as shall be required by law.

**Biennial examination by Insurance Commissioner**

Sec. 18. The Insurance Commission of the State of Texas shall biennially, or oftener, if they deem it necessary, examine the County Mutual Insurance Companies.

**Companies regarded as County Mutual Insurance Companies.**

Sec. 19. All incorporated or unincorporated mutual fire, storm and lightning insurance companies or associations in this State that do not do a general fire insurance business, but limit their business to the insuring of farm, residential and/or household property, real and/or personal, anywhere in this State against any one or more of the hazards against which County Mutuals may insure, or when it so limits its insurance business, shall, for the purpose of this Act, be considered County Mutual Insurance Companies.

Any such company or association, which has been or hereafter shall be in business for more than twenty years may, at any time before its charter expires by lapse of time, have its charter extended for a period of fifty years from the time of expiration of the original charter, and shall, under the extended charter, continue to have and enjoy all the rights, privileges and immunities that it had under the original charter; provided, however, that it is first authorized to extend its said charter either by a two-thirds majority vote of all of its Directors, or by a simple majority vote at a meeting of its policy-holders. The application for such extension shall set out in haec verbae the charter to be extended, and it shall state the time for which it is to be extended and be signed and acknowledged by the President and Secretary of the Company.

Any such Company whose charter has expired or may hereafter expire by lapse of time, but is or shall be still doing business in this State, may have its charter renewed for a term of fifty years from the time of the expiration of the original charter in like manner as charters may be extended, and from the time of such renewal it shall be entitled to all the rights, privileges and immunities it had and enjoyed under the original charter.

Any such unincorporated Mutual Fire Insurance Company which has heretofore been in business continuously for a period of five years or more, and has paid all its losses promptly according to contract, may, at any time hereafter, when authorized to do so by two-thirds of its Directors, or by a majority vote of its policy-holders, apply for a charter and be incorporated for a term of fifty years as a County Mutual Insurance Company under the laws of Texas without complying with Sections 2 to 5 inclusive, of this Act. The application for such charter

shall state its name, its purposes, the location of its principal office, the number and names of its Directors, and the nature and value of its assets, and it shall be signed and acknowledged by its President and Secretary. It shall thereupon be entitled to a charter and to function and do business as a County Mutual Insurance Company, and enjoy the same rights, privileges and immunities that it had and enjoyed as an unincorporated company, except as otherwise herein provided. Provided, however, that any such unincorporated company or association organized solely for mutual protection of property of its members and not for profit, which has heretofore been doing business for a period of ten years or more, and has paid all of its losses promptly according to contract, may continue to do business as an unincorporated association, and in such event, such association shall be exempt from all insurance laws of this State, except that such Company or association shall make the annual reports to the Commission of Insurance of the State of Texas as provided in Section 17, hereof, and shall be subject to examination by the Insurance Commission of the State of Texas as provided in Section 18, hereof.

#### **Reciprocal insurance contracts**

Sec. 20. County Mutual Insurance Companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other Companies on the mutual or cooperative plan; provided that no County Mutual shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a County Mutual reinsures the property of another Company, it shall not by reason of such fact be, or become a member or partner, of such other Company, but shall only become liable for the losses of such other Company as specified in the contract of interinsurance and not otherwise; and provided further, that a County Mutual shall only have authority to reinsure the risks of another Company in consideration of the fact that such other Company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

#### **Organization of local chapters**

Sec. 21. The by-laws of County Mutual Insurance Companies may provide for the organization of local chapters for the transaction of their business and for the creation of Districts in and for which their Directors may be elected. The by-laws may also provide that delegates from local chapters, constitute the supreme governing body of the Company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

#### **Removal of officers or employees**

Sec. 22. The Board of Directors of a Company may at any time, in any meeting by a two-thirds majority vote of all the Directors, remove any Officer of the Company from his office, or any of the employees from their employment, without assigning any reason therefor, and name another person or persons to assume the duties of the one or ones removed, when, in their judgment, it shall be deemed to the best interest of the Company, and the term of office of every Officer of a Company, and

the employment of every employee shall be subject to this provision of the law.

**Exemption from insurance laws**

Sec. 23. County Mutual Insurance Companies shall be exempt from the operation of all insurance laws of this State, except as herein specifically provided.

**By laws as part of contracts**

Sec. 24. By-laws of the Company shall always constitute a part of the contract with the insured and the policy shall so state.

**Provision against waiver of by laws**

Sec. 25. Such Companies may provide in their by-laws that local chapters and officers and agents elected by them do not have the power to waive any provision of such by-laws.

**Partial invalidity**

Sec. 26. If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity. Acts 1937, 45th Leg., p. 184, ch. 99.

Effective April 6, 1937.

Section 27 declared an emergency making the Act effective on and after its passage.

**Title of Act:**

An Act defining County Mutual Insurance Companies, providing the hazards against which they may write insurance, providing for incorporation of County Mutual Insurance Companies and the requirements therefor, providing for permits to solicit insurance on the mutual or cooperative plan and requirements thereof; providing requirements and contents of charters; authorizing such companies to adopt by-laws for the regulation and management of their affairs; providing for a lien to secure payment of premiums and assessments; liability of policy-holders on the mutual plan; authorizing such companies to borrow money and defining solvency of such companies; providing for meetings of policy-holders; limiting territory in which it can operate; providing for accumulation of reserve funds and for investment thereof; requiring written annual reports to members; providing for

examination of County Mutual Insurance Companies by the Insurance Commission of the State of Texas; exempting unincorporated Mutual Companies or Associations except for filing annual reports; providing that such Companies now in business shall be known as County Mutual Insurance Companies; providing that charters of such Companies expired or about to expire may be extended for an additional fifty years with same rights enjoyed under its original charter and stating prerequisites to such extension; and providing for subsequent renewals of charters; authorizing reinsurance on defined conditions of any or all risks and contracts essential thereto; authorizing organization of local lodges for conduct of business and for representative form of government; providing for removal of officers, exemption from all insurance laws except as herein provided; requiring that by-laws constitute part of contract with insured; providing that unconstitutionality of any part of this Act shall not affect the remainder thereof, and declaring an emergency. [Acts 1937, 45th Leg., p. 184, ch. 99.]

**CHAPTER TEN—STATE INSURANCE COMMISSION**

**Art.**

4918a. Tax on gross premiums for Workmen's Compensation Insurance  
[New].

**Art. 4902. Tax on premiums as additional tax**

The State of Texas shall assess and collect an additional one and one-fourth per cent of the gross fire and/or lightning, and/or tornado, and/or

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

windstorm, and/or hail insurance premiums of all companies doing the business of fire or lightning or tornado or wind storm or hail insurance in this State according to the reports made to the Board of Insurance Commissioners as required by law; and said taxes when collected shall be placed with the State Treasurer in a separate fund which shall be known as the Fire Insurance Division Fund, which Fund shall be kept separate and apart from other funds and moneys in his hands; and said special Fund or so much thereof as may be necessary shall be held and expended for the purpose of carrying out the provisions of this Chapter; and should there be an unexpended balance at the end of any year, said balance shall remain in said Fund and the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury, together with said unexpended balance in said Fund in the Treasury, will be sufficient to pay all expenses for the current year, and not exceed the amount necessary to pay all necessary expenses of maintaining the Fire Insurance Division of said Board, so that no deficit shall occur in said Fund, which funds shall be paid out upon requisition made out and filed by a majority of the Commission, when the Comptroller shall issue warrants therefor. The taxes levied and assessed by this Section shall be independent of and in addition to all other taxes now imposed, or which may hereafter be imposed by law, against any company mentioned herein. [As amended Acts 1937, 45th Leg., p. 29, ch. 24, § 1.]

Effective March 4, 1937.

Section 2 of the amendatory act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

**Art. 4906.** [Repealed by Acts 1937, 45th Leg., p. 30, ch. 25, § 2]

Effective March 4, 1937.

**Art. 4918a. Tax on gross premiums for Workmen's Compensation Insurance**

To defray the expense of carrying out the provisions of Articles 4907 to 4918, inclusive, Chapter 10, Title 78, Revised Civil Statutes of Texas of 1925, there shall be annually assessed and collected by the State of Texas from each stock company, mutual company, reciprocal or inter-insurance exchange, or Lloyds association writing Workmen's Compensation Insurance in this State, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of three-fifths of one per cent of gross premiums collected by such company or association during the preceding year, under Workmen's Compensation policies written by said companies or associations covering risks in this State, according to the reports made to the Commissioner as required by law. Said taxes when collected shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and moneys in his hands, and shall be known as the Compensation Insurance Division Fund, said Fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures hereunder shall not exceed in the aggregate the sum assessed and collected from said companies and associations; and should there be an unexpended balance at the end of any year, the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the Treasury will be sufficient to pay all expenses of carrying out the provisions of said Articles, which funds shall be paid out upon requisition made out and filed by a majority of the Board of Insurance Commissioners when

the Comptroller shall issue warrants therefor. Any amount remaining in said Fund at the end of any year shall be carried over and expended in accordance with the provisions of this Act during the subsequent year or years. Acts 1937, 45th Leg., p. 30, ch. 25, § 1.

Effective March 4, 1937.

Section 2 of Acts 1937, 45th Leg., p. 30, ch. 25, repeals art. 4906 and section 3 provides in substance that if any portion of the section is held invalid, such invalidity shall not affect the remainder of the act. Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the annual assessment and collection of a tax on premiums for Workmen's Compensation Insurance policies written by stock companies, mutual companies, reciprocals or inter-insur-

ance exchanges, or Lloyds associations covering risks in this State to defray the salaries and expenses of carrying out the provisions of Articles 4907 to 4918, inclusive, Chapter 10, Title 78, Revised Civil Statutes of Texas of 1925, and providing that any unexpended balance shall be carried over in succeeding years in a separate fund, and shall reduce the assessment for succeeding years, and repealing Article 4906, Revised Civil Statutes of 1925; providing a saving clause, and declaring an emergency. [Acts 1937, 45th Leg., p. 30, ch. 25.]

## CHAPTER ELEVEN—FIRE AND MARINE COMPANIES

### Art. 4925. [4870] Shall file bond

Every fire insurance company, not organized under the laws of this State, applying for a certificate of authority to transact any kind of insurance in this State, shall, before obtaining such certificate, file with the Commissioner a bond, with good and sufficient surety or sureties, to be approved by and to be payable to the Commissioner and his successors in office, in a sum equal to twenty-five (25%) per cent of its premiums collected from citizens or upon property in this State during the preceding calendar year, as shown by its annual report for such year. The bond in no case shall be less than Ten Thousand (\$10,000.00) Dollars, nor more than Seventy-five Thousand (\$75,000.00) Dollars, conditioned that said company will pay all its lawful obligations to citizens of this State. Such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be exhausted, and the same shall be kept in force until all claims of such citizens arising out of obligations of said company have been fully satisfied, but in no event shall the total recoveries permitted on said bonds exceed the face value thereof. Such bonds shall provide that in the event the company shall become insolvent or cease to transact business in this State, at any time, when it has outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Commissioner shall have power, after having given ten (10) days notice to the officers of such company, or any receiver in charge of its property and affairs, to contract with any other insurance company transacting business in this State for the assumption and reinsurance by it of all the insurance risks outstanding in this State of such company which is insolvent, or which has ceased to transact business in this State, which contract shall also provide for the assumption by such reinsurance company of all outstanding and unsatisfied lawful claims then outstanding against such company which has become insolvent, or ceased to transact business in this State. In the event of the Commissioner making any such contract, and if the same shall be approved as reasonable by the Attorney General and the Governor of this State, the reinsuring company shall be entitled to recover from the makers of such bond the amount of the premium or compensation

so agreed upon for such reinsurance. Any company desiring to do so may, at its option, in lieu of giving the bond required by this Article, deposit securities of any kind in which it may lawfully invest its funds with the State Treasurer upon such terms and conditions as will in all respects afford the same protection and indemnity as herein provided for to be afforded by said bond. [As amended, Acts 1937, 45th Leg., p. 1255, ch. 472, § 1.]

Effective 90 days after May 22, 1937, date of adjournment. declared an emergency and provided that the Act should take effect from and after its passage.

Section 3 of the amendatory Act of 1937

its passage.

#### Art. 4926. [4871] May deposit securities

Every fire insurance company, not organized under the laws of this State, hereafter issuing or causing or authorizing to be issued, any policy of insurance other than life insurance, shall first have filed with the Commissioner during the calendar year in which such policy may issue, or authorize or cause to be issued, a bond of good and sufficient sureties to be approved by such Commissioner in a sum of not less than Ten Thousand (\$10,000.00) Dollars, conditioned for the payment of all lawful obligations to citizens of this State arising out of any policies or contracts issued by such fire insurance company; which such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be adjusted, and so long as there remains outstanding any such obligations or contracts of such fire insurance company, but in no event shall the total recoveries permitted on said bond exceed the face value thereof. This Article shall not apply to any person, firm or corporation, or association, doing an inter-insurance, co-operative or reciprocal business. [As amended Acts 1937, 45th Leg., p. 1255, ch. 472, § 2.]

Effective 90 days after May 22, 1937, date of adjournment.

### CHAPTER TWELVE—FIRE, LIGHTNING, HAIL AND STORM COMPANIES

#### Art. 4941. Investment of funds

Funds of mutual companies may be invested in United States Bonds, Texas State Bonds, county or city bonds of this State, if such bonds are issued by authority of law and interest upon them has never been defaulted; or in first mortgages on improved real estate within the State where the first mortgage does not exceed fifty (50) per cent of the value of the land and improvements thereon; or in notes or bonds secured by mortgage or deed of trust insured by the Federal Housing Administrator; provided that the above restrictions concerning mortgage loans shall not apply to such insured securities. [As amended Acts 1937, 45th Leg., p. 1297, ch. 483, § 1.]

Effective 90 days after May 22, 1937, date of adjournment. declared an emergency and provided that the Act should take effect from and after its passage.

Section 2 of the amendatory Act of 1937

its passage.

### CHAPTER EIGHTEEN—GENERAL CASUALTY COMPANIES

#### Art. 4993. Capital and deposits

Only companies organized and doing business under the provisions of this Chapter shall be subject to its provisions. Such company shall have not less than One Hundred Thousand Dollars (\$100,000) of capital

stock subscribed, paid in, in cash, with an additional Fifty Thousand Dollars (\$50,000) of capital stock subscribed and fully paid in, in cash, for every kind of insurance more than one which it is authorized to transact. Such companies with Two Hundred Thousand Dollars (\$200,000) of capital stock subscribed and fully paid in, in cash, shall be authorized to transact all and every kind of insurance specified in the first Article of this Chapter; all of which capital shall be paid up or invested in bonds of the United States, or of this State, or of any county or municipality of this State, or in notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, or in bonds or first liens upon unincumbered real estate in this State, or in any other State in which such company may previously have been licensed to conduct an insurance business. In either instance, such real estate shall be worth not less than forty (40) per cent more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for not less than sixty (60) per cent of the value thereof, with loss-payable clause to the company. The value of such real estate shall be determined by a sworn valuation made by two freeholders of the county where the real estate is situated. Provided that such restriction shall not apply to mortgages insured by the Federal Housing Administrator. Upon such company furnishing evidence satisfactory to the Commissioner that the capital stock as herein prescribed has been all subscribed and paid up in cash in good faith, and that such capital stock has been invested as herein prescribed, and upon the deposit of the sum of Fifty Thousand Dollars (\$50,000) of such securities or in cash with the State Treasurer, then said Commissioner shall issue to said company a certificate authorizing it to do business. No part of the capital paid in shall be loaned to any officer of said company. In the event any such company shall be required by the law of any other State, country, or province as a requirement prior to doing an insurance business therein to deposit with the duly appointed officer of such other State, country, or province, or with the State Treasurer of this State, any securities or cash in excess of the said deposit of Fifty Thousand Dollars (\$50,000) hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by this law, or cash sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of all policyholders of the company. Any deposits so made to meet the requirements of any other State, country, or province shall not be withdrawn by the company except upon filing with the Commissioner evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other State, country, or province by which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time. As amended Acts 1937, 45th Leg., p. 422, ch. 216, § 1; Acts 1939, 46th Leg., p. 394, § 1.

Effective May 23, 1939.

For sections 2 and 3, see notes under art. 4705.

**Art. 5006. Repealed. Acts 1939, 46th Leg., p. 394, § 2, effective May 23, 1939**

Article was amended by Acts 1933, 43rd p. 22, ch. 7, § 1; Acts 1937, 45th Leg., p. Leg., p. 851, ch. 242; Acts 1935, 44th Leg., 1123, ch. 451, § 1.



## CHAPTER TWENTY—INDEMNITY CONTRACTS

Art.

5029a. May advance money [New].

5033a. Severability [New].

### Art. 5025. Attorney for Subscribers

Such contracts may be executed by a duly appointed attorney in fact duly authorized and acting for such subscribers. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney.

Any person, firm or corporation may act as such attorney in fact, provided such attorney in fact shall make a good and sufficient fidelity bond acceptable to the Board of Insurance Commissioners of Texas and payable to the subscribers at the exchange, or, in lieu thereof, payable to the said Board of Insurance Commissioners, such bond to be in the sum of Twenty-five Thousand Dollars (\$25,000) in the case of an individual or firm, and Fifty Thousand Dollars (\$50,000) in the case of a corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss, not exceeding the penalty of the bond, as the exchange shall sustain of money or property by an act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication on the part of the said attorney in fact directly or through connivance with others, and in the event of any violation of the conditions of said bond, the insurance supervisory authority of any State in which the attorney in fact is authorized to transact the business of the exchange may bring suit to enforce the penalty of the bond on behalf of the subscribers; provided, that a deposit with the proper lawful authority of the home State of such exchange of cash or securities of the kind in which general casualty companies may invest their funds, in like amount, conditioned, approved and payable in like manner, may be used in lieu of such bond. As amended Acts 1939, 46th Leg., p. 417, § 1.

Effective May 13, 1939.	the act should take effect from and after
Section 10 of the amendatory Act of 1939	its passage.
declared an emergency and provided that	

### Art. 5026. Declaration of Subscribers

Such subscribers, so contracting among themselves, shall, through their attorney in fact, file with the Board of Insurance Commissioners a declaration verified by the oath of such attorney in fact setting forth:

1. The name or the title of the office at which subscribers propose to exchange such indemnity contracts. Said name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of said Board of Insurance Commissioners is calculated to confuse or deceive. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or interinsurance exchanges.

2. The kind or kinds of insurance to be effected or exchanged, provided that same shall not include life insurance.

3. A copy of the form of policy, contract or agreement under or by which such insurance is to be effected or exchanged.

4. A copy of the form of power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged, which form shall be subject to approval by the Board of Insurance Commissioners of Texas; provided, however, that, except as to

matters concerning which specific provision is made in this Chapter, nothing herein contained shall be so construed as to permit the said Board to require the filing or use of uniform forms of such instruments. Such power of attorney or other authority executed by the subscribers at any such exchange shall provide that such subscribers shall be liable, in addition to the premium or premium deposit specified in the policy contract, to a contingent liability equal in amount to one additional annual premium or premium deposit. Such subscribers at such exchange may provide by agreement that the premium or premium deposit specified in the policy contract on all forms of insurance except life shall constitute their entire liability through the exchange while, but only while, the free surplus of the reciprocal exchange is equal to Two Hundred Thousand Dollars (\$200,000); provided that if such exchange does not or is not applying to exchange workmen's compensation, employers' liability, or contracts providing indemnity against legal liability to third persons, except automobile public liability and property damage which is not subject to the regulations of the Interstate Commerce Commission, the Railroad Commission of Texas, or other similar bodies in the various States, such exchange may provide by agreement that the premium or premium deposit specified in the policy contract shall constitute the subscriber's entire liability through the exchange while, but only while, it maintains a free surplus of not less than Fifty Thousand Dollars (\$50,000) if only one kind of insurance is exchanged, with an additional Ten Thousand Dollars (\$10,000) of free surplus for each additional kind of insurance exchanged (including automobile public liability and property damage which is not subject to the regulations of the Interstate Commerce Commission, the Railroad Commission of Texas, or other similar bodies in the various States), but not more than One Hundred Thousand Dollars (\$100,000) surplus shall be required; provided, however, that any domestic reciprocal organized prior to the effective date of this Act which has been and is exchanging contracts without contingent liability and which does not have the minimum surplus required by this Section to exchange such contracts, may continue to exchange contracts without contingent liability until December 31, 1943, provided that

(a) On December 31, 1939, December 31, 1940, December 31, 1941, and December 31, 1942, it shall have increased its surplus by respective amounts of twenty-five (25) per centum of the difference between the surplus existing on December 31, 1938, and the surplus herein required of a reciprocal before it is permitted to exchange contracts without contingent liability; and

(b) At no time during each calendar year of the period above referred to shall the surplus be less than thirty (30) per centum of the premiums written during each such year; and

(c) All other provisions of this Act shall be complied with; and

(d) If such reciprocal fails to increase its surplus in accordance with this subsection, such reciprocal shall be subject to the minimum surplus as above-mentioned, or discontinue exchanging policies without contingent liability.

5. The location of the office or offices from which such contracts or agreements are to be issued.

Provided, further, that, as to all classes of insurance permitted to be written under the provisions of this Chapter, such verified declaration shall disclose the following:

(a) In case of workmen's compensation insurance, that applications have been made for indemnity by at least fifty (50) separate subscribers who have not less than two thousand (2,000) employees, as represented

by executed contracts or bona fide applications to become concurrently effective.

(b) As to all other classes of insurance permitted to be written under the provisions of this Chapter, that applications for indemnity have been made by at least seventy-five (75) separate subscribers for each class of risk to be exchanged, aggregating not less than Five Hundred Thousand Dollars (\$500,000) as to each class of risk, as represented by executed contracts or bona fide applications to become concurrently effective. As amended Acts 1939, 46th Leg., p. 417, § 2.

Effective May 13, 1939.

Emergency section. See note under article 5025, ante.

#### Art. 5027. Service of Process

Concurrently with the filing of such declaration, the attorney shall file with the Board of Insurance Commissioners an instrument in writing executed by him for said subscribers conditioned that upon the issuance of certificates of authority as hereinafter provided, service of process may be had upon the chairman of such Board in all suits in this State arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served and said chairman of such Board shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. It is provided, however, that in lieu of the method hereinabove provided, service of process may be had upon such attorney in fact in all suits, which service shall likewise be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. If said attorney in fact be a corporation, either foreign or domestic, or joint stock company, or association, service of process thereon may be had in any manner provided by general law for service of process on corporations, joint stock companies, or associations. As amended Acts 1939, 46th Leg., p. 417, § 3.

Effective May 13, 1939.

Emergency section. See note under article 5027, ante.

#### Art. 5029. Financial Requirements

There shall be maintained at all times such reserves as are required, or which, by the laws of this State or by the lawful rules and regulations of the Board of Insurance Commissioners, hereafter may be required, to be maintained by stock insurance companies transacting the same kind or kinds of insurance business.

There shall be maintained at all times assets in a sum sufficient to discharge all liabilities, including reserves, and to provide a surplus over all liabilities, including reserves, of not less than Fifty Thousand Dollars (\$50,000), and if at any time such surplus shall not equal that amount the attorney may make up such deficiency in the manner provided by Article 5029a of this Chapter.

The required assets of such exchanges shall be maintained in cash or securities of the kind in which general casualty companies are authorized by law to invest or lend their funds. Any exchange whose attorney in fact now has a certificate of authority to transact business in this State shall have until December 31, 1941, to fulfill the foregoing financial requirements specified in this Article; provided, however, that, upon good cause shown, the Board of Insurance Commissioners may, in

the exercise of reasonable discretion, extend such period of time for not to exceed three (3) years thereafter; provided further, however, that any exchange requiring such additional time to fulfill such financial requirements shall not have, at any time after the passage of this Act, a surplus less than its said surplus as the same existed on January 1st, 1939.

If fidelity and surety bond insurance is exchanged in this State by any reciprocal exchange, there shall be kept on deposit with the State Treasurer of Texas, money, bonds, or other securities, in an amount not less than Fifty Thousand Dollars (\$50,000). Such securities shall be approved by the Board of Insurance Commissioners, and this amount shall be kept intact at all times. Any foreign exchange writing fidelity and surety bonds in this State shall file with the Board of Insurance Commissioners evidence, satisfactory to the Board of Insurance Commissioners, that it has on deposit with the State Treasurer or other proper officials of its home State or in escrow under his supervision and control in some reliable bank or trust company One Hundred Thousand Dollars (\$100,000) or more, in money, bonds or other securities for the protection of its policyholders; provided, further, that if said bonds and securities herein referred to are not acceptable to and approved by the Board of Insurance Commissioners of Texas, said Board shall have the right and authority to deny the attorney in fact a certificate of authority. As amended Acts 1939, 46th Leg., p. 417, § 4.

Effective May 13, 1939.

Emergency section. See note under article 5025, ante.

#### Art. 5029a. May Advance Money

Any attorney in fact of such exchange may advance to such exchange any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirement of law, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners (which approval shall not be arbitrarily refused), only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the exchange or any of its assets. No commission or promotion expenses, or other bonus, shall be paid in connection with the advance of any such money to the exchange, and the amount of all such advances shall be reported in each annual statement. Added Acts 1939, 46th Leg., p. 417, § 5.

Effective May 13, 1939.

Emergency section. See note under article 5025, ante.

#### Art. 5031. Any Corporation May Exchange

Any corporation, public, private or municipal, now or hereafter organized under the laws of this State, shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purpose for which such corporations are organized and as much granted as the rights and powers expressly conferred. As amended Acts 1939, 46th Leg., p. 417, § 6.

Effective May 13, 1939.

Emergency section. See note under article 5025, ante.

## Art. 5032. Certificate of authority

Such attorney by whom or through whom are issued any policies of or contracts for indemnity of the character referred to herein shall procure from the Board of Insurance Commissioners annually a certificate of authority stating that all of the requirements have been complied with, and upon such compliance and the payment of the fees required by law, the Board of Insurance Commissioners shall issue such certificate of authority. Such Board of Insurance Commissioners may revoke or suspend any certificate of authority issued hereunder in case of breach of any condition imposed by this law, after reasonable written notice has been given said attorney so that he may appear and show cause why action should not be taken; provided, that said attorney by whom and through whom are issued any policies of or contracts for indemnity of the character herein referred to shall have the right of appeal to any District Court of Travis County, Texas, and shall have twenty (20) days from the date of any adverse ruling to effect such appeal; and the further right of appeal by any such attorney from the ruling or decision of any such District Court is hereby expressly granted. Any attorney who may have procured a certificate of authority hereunder shall renew same annually thereafter. Any certificate of authority shall continue in effect until the new certificate of authority be issued or specifically refused. The schedule of fees set out in Article 3920, so far as pertinent, shall apply to reciprocal exchanges and their attorneys in fact. Said exchanges shall pay a tax of three and one-fourth (3¼) per cent on all premiums collected, except fire and workmen's compensation premiums, under the provisions of Article 7064, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 8, Chapter 495, Page 2040, Article 4, Acts of the Third Called Session, Forty-fourth Legislature, 1936, as amended Acts 1937, Forty-fifth Legislature, House Bill No. 441, Section 1, as amended Acts 1939, Forty-sixth Legislature, House Bill No. 556, subject to reduction by investment in Texas securities as therein provided; and exchanges writing workmen's compensation insurance shall pay a tax of one-half (½) of one (1) per cent of the workmen's compensation premiums collected under the provisions of Article 7064a, Revised Civil Statutes of Texas, 1925, as enacted by House Bill No. 8, Chapter 495, Page 2040, Article 4, Acts of the Third Called Session, Forty-fourth Legislature, 1936, as amended Acts 1937, Forty-fifth Legislature, by House Bill No. 441, Section 1-b, as amended Acts 1939, Forty-sixth Legislature, House Bill No. 557; and a further tax of three-fifths (3/5) of one (1) per cent or such lesser amount as the Board of Insurance Commissioners may assess, on workmen's compensation premiums collected in this State under the provisions of Chapter 25, Section 1, Acts of 1937, Forty-fifth Legislature.<sup>1</sup>

Provided further, that an additional tax of one-fifth (1/5) of one (1) per cent or such lesser amount as the Board of Insurance Commissioners may assess shall be paid by such exchanges on gross premiums collected for motor vehicle insurance under the provisions of Chapter 253, Acts of the Fortieth Legislature, as amended Acts of 1937, Forty-fifth Legislature by Senate Bill No. 77.<sup>2</sup> As amended Acts 1939, 46th Leg., p. 417, § 7.

<sup>1</sup> Article 4918a.

<sup>2</sup> Article 4682b.

Effective May 13, 1939.

Emergency section. See note under article 5025, ante.

**Art. 5033. What insurance law applies**

Except as provided in this Chapter, no insurance law of this State shall apply to the exchange of such indemnity contracts unless reciprocal or interinsurance exchanges are specifically mentioned in such other laws. As amended Acts 1939, 46th Leg., p. 417, § 8.

Effective May 13, 1939.

Emergency section. See note under article 5025, ante.

**Art. 5033a. Severability**

If any word, phrase, clause, sentence, paragraph or section, or part thereof, of this Chapter shall be held invalid, unconstitutional or inoperative, such holding shall not affect the validity of the remainder of this Chapter, and the Legislature declares hereby that it would have enacted the remainder of said Chapter, despite any such invalidity. If any exception to or limitation upon any general provision contained herein shall be held to be invalid, unconstitutional or inoperative, the general provision, nevertheless, shall stand effective and valid as if the same had been enacted without such limitation or exception. Added Acts 1939, 46th Leg., p. 417, § 9.

Effective May 13, 1939.

Emergency section. See note under article 5025, ante.

**CHAPTER TWENTY-ONE—GENERAL PROVISIONS**

Art.

5068c. Liquidation, rehabilitation, reorganization or conservation of insurers [New].

**Art. 5057a. Tax assessment of fire and casualty companies**

Fire insurance companies and casualty insurance companies incorporated under the laws of this State shall hereafter be required to render for State, County and municipal taxation, all of their real estate as other real estate is rendered. All personal property of such insurance companies shall be valued as other personal property is valued for assessment in this State, and in the following manner: From the total valuation of their assets shall be deducted the reserves, which reserves shall be computed in such manner as may be prescribed by the rules and regulations of the Board of Insurance Commissioners, for unearned premiums and for all bona fide outstanding losses, and from the remainder shall be deducted the assessed value of all real estate owned by such companies, and the remainder shall be the taxable personal property of such companies, to be assessed as other property.

All real estate, furniture, fixtures and automobiles, owned by any such company shall be rendered for taxation in the city and in the county where such property is located. All other personal property owned by such company shall be rendered for taxation in the city and county where the principal business office of any such company is fixed by its charter. As amended Acts 1939, 46th Leg., p. 425, § 1.

Effective 90 days after June 21, 1939, date declared an emergency and provided that the Act should take effect from and after its passage.

Section 2 of the amendatory Act of 1939

Art. 5068c. Liquidation, rehabilitation, reorganization or conservation of insurers

Section 1. Definitions. For the purposes of this Act:

(a) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of the Board of Insurance Commissioners.

(b) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(c) "General assets" means all property, real or personal, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all in excess of the amount necessary to discharge the sum or sums secured. Assets held in trust and assets held on deposit, for the security or benefit of all policyholders, or all policyholders and creditors, in the United States, shall be deemed general assets.

(d) "Liquidator" means the person designated by the Board of Insurance Commissioners as receiver, liquidator, rehabilitator or conservator of all insurers as defined herein.

(e) "Board" shall mean the Board of Insurance Commissioners of the State of Texas.

Sec. 2. Conduct of Delinquency Proceedings Against Domiciliary Insurers. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the liquidator designated by the Board of Insurance Commissioners as hereinafter provided for shall be such receiver. The liquidator so appointed receiver shall forthwith take possession of the assets of such insurer and deal with the same in his own name as receiver or in the name of the insurer as the court may direct.

The said receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts and rights of action of such insurer, wherever located, as of the date of entry of the order directing possession to be taken. The filing or recording of such an order in any record office of the State shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly filed or recorded by such insurer. The receiver shall be responsible, on his official bond hereinafter provided for, for all assets coming into his possession. The court may require an additional bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy liquidator, or other assistant or employee appointed by or under the authority of this Act.

Upon taking possession of the assets of a delinquent insurer the receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as may be necessary to conserve the assets and protect the rights of policyholders and claimants for the purpose of liquidating, rehabilitating, reinsuring, reorganizing or conserving the affairs of the insurer. An inventory in duplicate of the insurer's assets shall be prepared forthwith by the liquidator, one of which shall be filed in the office of the Board and one in the office of the clerk of the court having jurisdiction, which inventories shall be open to inspection. The liquidator may sell or compound doubtful debts and may sell real or personal property under

order of the court, but no such order shall be entered or sale made without notice and hearing. All money collected by the liquidator shall be forthwith deposited in such bank or banks in this State as may be designated by the Board, which banks shall be members of the Federal Deposit Insurance Corporation. The funds collected or realized from the assets of each insurer shall be kept separate and apart from all other funds. Whenever any account in any such bank exceeds the maximum amount insured by said Federal Deposit Insurance Corporation, the Board is hereby authorized and directed to make such contracts and require such security as it may deem proper for the safeguarding of such deposit.

If it shall appear to the court that the interests of creditors will be best served by liquidation of insurer's affairs, the liquidator shall cause weekly notice to be published for three (3) consecutive months in two (2) or more newspapers. The notice shall call upon all persons having claims against the insurer to present them to the liquidator and make legal proof thereof at a designated place within ninety (90) days after the date of the first insertion of the notice. The liquidator shall mail a similar notice to all persons whose names appear as creditors upon insurer's books.

Under direction of the court, the liquidator may pay one or more dividends after the date fixed for presentation of claims, and may pay a final dividend after one year from the date of the first published notice to creditors. Delayed claims may participate only in future dividends.

The liquidator shall have the discretion to approve or reject any claim filed against the insurer. Objections to any claim not rejected may be made by any party interested, by filing the objections with the liquidator, who shall forthwith present them to the court for determination after notice and hearing. Upon the rejection of each claim, the liquidator shall notify the claimant of such rejection either by registered mail or by written notice personally served. Action upon a claim so rejected must be brought within six (6) months after service.

The Board shall have power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary. The payment of such compensation and all expenses of liquidation shall be made by the liquidator out of funds or assets of the insurer on approval of the Board. An itemized report of such expenses, sworn to by the liquidator and approved by the Board, shall be presented to the court from time to time, which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

Unclaimed dividends on approved claims remaining in the liquidator's hands after payment of the final dividend shall be delivered to the Board. If funds or assets remain after the liquidator has paid in full every approved claim filed and has paid all expenses of the liquidation, he shall pay over to the Board an amount equal to the unclaimed liabilities according to insurer's books. Such funds shall be deposited by the Board in trust in a special account to be maintained in the State Treasury.

On receipt of satisfactory written and verified proof of ownership within seven (7) years from the date such funds are so deposited in



the State Treasury, the Board shall certify such facts to the Comptroller of Public Accounts, who shall issue proper warrant therefor in favor of the parties respectively entitled thereto drawn on the State Treasurer. Any such money remaining unclaimed with the Board for seven (7) years shall automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

When the liquidator shall have made provision for unclaimed dividends and liabilities, he shall call a meeting of the stockholders of the insurer by giving notice thereof in one or more newspaper in the county where the principal office of the insurer was located, and by written notice to the stockholders of record at their last known address. At such meeting, the stockholders shall appoint an agent or agents to take over the affairs to continue the liquidation for benefit of the stockholders. Voting privileges shall be governed by the insured's bylaws. A majority of the stock shall be represented at the agent's appointment. Such agent or agents shall execute and file with the court such bond or bonds as shall be approved by it, conditioned on the faithful performance of all the duties of the trust. Under order of the court, the liquidator shall then transfer and deliver to such agent or agents for continued liquidation under the court's supervision all assets of insurer remaining in his hands, whereupon the liquidator and the Board, and each member and employee thereof, shall be discharged from any further liability to such insurer and its creditors and stockholders; provided, however, that nothing herein contained shall be so construed as to permit the insurer to continue in business as such, but the charter of such insurer and all permits and licenses issued thereunder or in connection therewith shall be ipso facto revoked and annulled by such order of the court directing the liquidator to transfer and deliver the remaining assets of such insurer to such agent or agents.

Sec. 3. Ancillary Delinquency Proceedings. Whenever under the laws of this State, a receiver is to be appointed in delinquency proceedings for an insurer domiciliary in another State, a court of competent jurisdiction in this State shall, on the petition of the Board of Insurance Commissioners of this State, appoint the liquidator herein provided as ancillary receiver in this State of such insurer. The Board shall file such petition (a) if it finds that there are sufficient assets of such insurer located in this State to justify the appointment of an ancillary receiver, or (b) if ten (10) or more persons resident in this State, having claims against such insurer, file a petition or petitions in writing with the Board, requesting the appointment of such ancillary receiver. Such ancillary receiver shall have the right to sue for and reduce to possession the assets of such insurer in this State, and shall have the same powers and be subject to the same duties with respect to such assets, as are possessed by a receiver of a domiciliary insurer under the laws of this State. The remaining provisions of this Act shall be applicable to the conduct of such ancillary proceedings.

Sec. 4. Appointment of Liquidator. The liquidator herein named shall be appointed by a majority of the said Board of Insurance Commissioners, and shall be subject to removal by a majority of said Board, and before entering upon the duties of said office, shall file with the Board of Insurance Commissioners a bond in the sum of Ten Thousand Dollars (\$10,000), payable to the Board of Insurance Commissioners, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.

Said liquidator shall file reports with the Board of Insurance Commissioners upon its request showing the operation, receipts, expenditures and general condition of any organization of which he may have charge at that time, and, upon request, shall file a copy of said report with the court in which said receivership proceeding is pending. He shall also file a final report of each organization which he has liquidated or handled showing all receipts and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

If, within two (2) years after the receivership shall have been closed by final order of the court, the liquidator shall discover assets not known to him during receivership, he shall report his findings to the court. It shall be within the discretion of the court as to whether the value of the after discovered assets shall justify the reopening of the receivership for continued liquidation.

Sec. 5. Bonds. All bonds required under the terms of this Act shall be upon such forms as may be prescribed by or satisfactory to the Board, and shall be executed by some solvent corporate company authorized to transact its surety bond business in Texas.

Sec. 6. Conflicts of Laws. In the event of conflict between the provisions of this Act and the provisions of any existing law, the provisions of this Act shall prevail, and all laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of such conflict; provided, however, that to the extent of the conflicts between this Act and the provisions of Senate Bill No. 135, Acts of the Regular Session, Forty-sixth Legislature,<sup>1</sup> the latter shall prevail, and the provisions of this Act are hereby declared to be inapplicable to insolvency proceedings instituted under the provisions of said Senate Bill No. 135. Acts 1939, 46th Leg., p. 389.

<sup>1</sup>Article 5068—1, effective May 12, 1939.

Effective June 30, 1939.

Section 7 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act concerning the liquidation, rehabilitation, reorganization or conservation of insurers and placing same under the Board of Insurance Commissioners; defining certain words and phrases used in this Act; providing for the appointment of a liquidator by the Board of Insurance Commissioners; providing that in all delinquency proceedings against insurers said liquidator shall be appointed as receiver therefor and outlining his duties as such receiver; providing for ancillary delinquency proceedings; defining the powers, duties, rights and privileges of receivers, liquidators, special deputy liquidators and other assistants and employees provided under the authority of this Act; providing for the preparation and

filing by the liquidator of duplicate inventories of the insurer's assets; providing that after notice and hearing the liquidator may sell or compound doubtful debts and may sell real or personal property under order of the court; providing for the deposit of all money collected by the liquidator; providing for the filing of claims with such liquidator and for judicial and other proceedings in connection therewith; providing for the compensation of the liquidator and all special deputy liquidators, counsel, clerks and assistants hereunder; providing for the disposition of unclaimed dividends on approved claims; providing for the revesting of title to the insurer's assets in the stockholders of such insurer upon payment of all claims by the liquidator; providing for the form and content of all bonds required under the terms of this Act; providing for the repeal of all laws or parts of laws in conflict herewith with certain exceptions; and declaring an emergency.

Acts 1939, 46th Leg., p. 389.

## CHAPTER TWENTY-TWO—PROVISIONS APPLICABLE TO CERTAIN SPECIFIED COMPANIES [NEW]

Art.

5068—1. Mutual assessment companies—  
scope of act.

### Art. 5068—1. Mutual Assessment Companies—Scope of Act

Section 1. This Act shall apply to and embrace all insurance companies and associations, whether incorporated or not, which issue policies or certificates of insurance on the lives of persons, or provide health and accident benefits, upon the so-called mutual assessment plan, or whose funds are derived from the assessments upon its policyholders or members, and shall, in fact, apply to all life, health and accident companies or associations which do not come within the provisions of Chapter 3, Chapter 5, Chapter 7, Chapter 8, Chapter 9, Chapter 18, Chapter 19, or Chapter 20, Title 78 of the Revised Civil Statutes of Texas. This Act shall include local mutual aid associations; state-wide life; or life, health and accident associations; mutual assessment life, health and accident associations; burial associations; and similar concerns, by whatsoever name or class designated, whether specifically named herein or not.

This Act does not enlarge the powers or rights of any of such associations nor enlarge the scope of their legal or corporate existence; nor authorize the creation of any association or corporation to do any of the sorts of business above indicated, where such creation is not now specifically permitted by law. The laws prohibiting or limiting such creation and the exercise of corporate power are not affected by this Act.

#### Definitions

Sec. 2. The following terms when used in this Act shall be defined:

“Association” shall refer to and include all types of organizations, corporations, firms, associations, or groups subject to the provisions of this Act.

“Board” shall refer to the Board of Insurance Commissioners of the State of Texas.

“Member” shall include policyholders or any persons insured by an association, by whatsoever means the insurance may be effective.

“Certificate” shall include any insurance policy or contract of insurance, certificate of membership or other document through which insurance is effected or evidenced.

“Face of certificate” shall refer to the maximum amount of promised benefits, as shown on the certificate.

“Paid in full” or “full payment” shall mean the payment of the full amount of maximum benefit due on the happening of the contingency insured against.

“Insolvent” shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this law.

“Assessment” shall include premiums and mean any and all money or valuable thing paid in consideration of such insurance as is afforded by the certificate.

“Membership fee” shall be the amount of the first assessment or assessments permitted by the Board to be placed in the expense fund of associations, representing cost of soliciting or procuring the member.

**Names of associations**

Sec. 3. Upon application for charter to do business in Texas the Board of Insurance Commissioners may determine whether the name of the association would be confusing and misleading to the public; if so, it may refuse the certificate or charter, and prohibit the doing of business under the name.

Any amendment to the charter of an association operating under this Act, changing the name of the association, must be submitted to the Board of Insurance Commissioners for approval; and the charter of any association operating under this Act may not be amended to provide for changing its name to a name that is determined by the Board of Insurance Commissioners to be confusing and misleading to the public.

**Officers of associations**

Sec. 4. The Board of Insurance Commissioners shall not issue to any association a certificate of authority to do business in Texas, when it shall find any officer, employee, or member of the Board of Directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order the removal of any officer, employee, or Director found unworthy of the trust, and if such officer, employee, or Director be not removed, the Board shall cancel the certificate and proceed to deal with the association as though it were insolvent.

**Bonds of officers and employees**

Sec. 5. Associations not already required by law to furnish a bond for the officer responsible for the handling of funds of the members, shall furnish a bond in some surety licensed by the Board to do business in Texas in the minimum amount of One Thousand (\$1,000.00) Dollars, said bond to be kept at all times at least equal to the mortuary or relief fund balance on hand, with a maximum of Twenty Thousand (\$20,000.00) Dollars. Said bond shall be made payable to the Board of Insurance Commissioners for the use and benefit of the members of the association, and shall obligate the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others.

In addition to the bond required in the preceding paragraph, and in addition to the bond already required by law of certain associations subject to this Act, each association shall procure for all other office employees, or other persons who may have access to any of its claim funds, separate bonds or blanket bonds with some surety licensed by the Board to do business in Texas, in an amount or amounts fixed by the Board with a minimum of One Thousand (\$1,000.00) Dollars and a maximum of Five Thousand (\$5,000.00) Dollars, payable to the Board of Insurance Commissioners for the use and benefit of the association obligating the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided for in this section may be had on such bonds until same are exhausted.

**Deposits**

Sec. 6. Each association, not already required by existing laws to do so, shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest risk assumed

on any one life or person, which may be in cash or in convertible securities subject to approval by the Board. Such deposit shall be liable for the payment of all judgments against the association, and subject to garnishment after final judgments against the association. When such deposit becomes impounded or depleted it shall at once be replenished by the association, and if not replenished immediately on demand by the Board, the association may be regarded as insolvent and dealt with as hereinafter provided.

When any association shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

#### Membership

Sec. 7. Each association shall keep a complete and correct roster of its members with proper statistical records for the purpose of determining proper cost of insurance, by ages or otherwise, and shall keep accurate records of groups, classes or clubs or other division of memberships, if any; and shall keep records to show amounts paid in on assessments by each member and each group; and as to groups, must show how the funds are distributed between expense and mortuary or relief funds, and showing the amounts paid out of the funds of the whole membership or each group in death claims or other benefits.

The associations subject to this law are hereby expressly prohibited from merging with another association, are prohibited from "transferring" any part or group of membership, or all the membership to another association, or from merging groups or transferring members from one group to another in an association without the consent in advance of the Board of Insurance Commissioners which may be given only after complete investigation into the facts and determination that such transfer or merger is to the advantage of members of the association or groups to be affected.

#### Books and records

Sec. 8. All the records and books of each association shall be kept in the shape, form and manner acceptable to the Board, and if such records and books of any association are kept in such manner as not to reflect truly and accurately the condition of the association, or the facts essential to its faithful and effective operation, the association shall at once adopt forms or systems acceptable to the Board which will serve the purpose most effectively.

#### Policies or certificates

Sec. 9. Every policy or certificate of insurance issued by an association shall state definitely on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid shall be plainly stated in the policy. Every health, accident or other benefit shall be plainly stated in the policy, and the terms and conditions under which they shall be paid shall be stated plainly in the policy.

An application for each certificate must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian; and a copy thereof must be attached to and made part of such certificate. If the certificate is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten point type in language acceptable to the Board.

All statements in the application shall in the absence of fraud be regarded as representations and not warranties.

All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way; and amendments to the by-laws which might affect such rights of members must forthwith be mailed by first-class mail to each certificate holder affected. In case of controversy the burden of proof shall be on the company to prove the amendment was mailed to the member. Each certificate must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two years from date of issue, except for non-payment of assessments; provided, however, any association may issue a certificate providing a benefit less than the maximum benefit named in the face of the certificate in case of the death of the member by his own hand while sane or insane. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on rates in force at the time of the death of the insured. No certificate issued by such association, nor any application for the certificate shall contain language or be in such form as to mislead the applicant or the policyholder as to the type of insurance afforded.

It shall be unlawful for any association to assume liability on a life insurance risk on any one life in an amount in excess of Five Thousand (\$5,000.00) Dollars.

Every certificate issued must be approved by the Board as to form and language before it is used by an association. It is not mandatory that these forms be uniform for all associations, but the Board is directed to bring about as great uniformity as is feasible as early as practicable by cooperation with the several associations. All certificate forms hereafter used must be in accord with the provisions of this Act and with all other laws regulating such associations as are embraced in this Act.

It will not be required that an association call in and reissue outstanding certificates if upon proper application to the Board and if special permission is granted by the Board, it shall by appropriate resolution or other action declare that claims and other obligations on outstanding certificates will be settled and met as though the requirements of this Act were contained in such certificates; and provided further that the association acts accordingly.

#### **Renewals of certificates.**

Sec. 10. In case a certificate shall terminate for any reason, and in case it shall be a rule of the association that all reinstated certificates shall be regarded as new certificates, then the application for reinstatement shall carry the statement in at least ten point type that the same rules apply to it as to the original certificate, and that it can be invalidated within the contestable period for false statements respecting the health or physical condition of the applicant, or other matters material to the risk. A true and correct copy of the application for reinstatement shall be mailed by first-class mail to the certificate holder upon the reinstatement of the certificate. In case of controversy the burden of proof shall be on the association to prove the copy of reinstatement application was mailed to the member. In the event a renewal certificate is issued, such renewal certificate shall have a copy of the application for reinstatement attached and made a part thereof.

It is specially provided, however, that in case an association shall renew or reinstate a certificate after termination, the payments by the reinstated member shall be divided between the funds in the same percentage as is required of regular payments in the particular by-laws, unless nine (9) months have elapsed between termination and reinstatement. If nine (9) months have elapsed between termination and reinstatement, a reinstatement fee not in excess of the membership fee may be charged and placed in the expense fund. Furthermore, in case of renewal or reinstatement, the renewal or reinstatement certificate shall not be contestable for any cause except non-payment of assessments for longer than six (6) months from date thereof, unless the reinstatement or renewal is within the original two (2) year contestable period, in which case the same may be extended for six (6) months from the date on which it would have originally expired.

#### Assessments

Sec. 11. Each association shall levy regular and periodical assessments by whatever name they may be called. These assessments must be in such amounts and at such proper intervals as will meet the reasonable operating expenses of the association, and pay in full the claims arising under its certificates. When or if in the course of operation it shall be apparent that the claims cannot be met in full from current assessments and funds on hand, the amount must be increased until they are adequate to meet such claims, and the Board shall so order.

When any association shall refuse to comply with the Board's recommendations or requirements respecting rates of assessments, it shall be treated as insolvent, and shall be dealt with as is hereinafter provided.

Each association operating under the provisions of this Act shall file its rate schedules with the Board of Insurance Commissioners.

#### Funds

Sec. 12. Assessments when collected shall be divided into at least two (2) funds. One (1) of these shall be the mortuary or relief fund, by whatever name it may be called in the different associations, from which claims under certificates shall be paid, and to a limited extent the cost of defending contested claims, and nothing else; and the other funds shall be the expense funds from which expenses may be paid. At least sixty (60%) per cent of assessments collected, except the membership fee, must be placed in the mortuary or relief fund. The mortuary or relief funds may be invested only in such securities as are a legal investment for the reserve funds of stock life insurance companies.

Such association shall provide in its by-laws for the portion of its assessments to be allotted to the mortuary or relief fund and may provide for the payment out of said mortuary or relief fund of attorneys' fees and necessary expenses arising out of the defense, settlement, or payment of contested claims. Any such payments out the mortuary or relief fund for other than claims shall be subject to approval of the Board of Insurance Commissioners.

A separate record shall be kept of the mortuary or relief funds of each group, club, or class, and the mortuary or relief funds of one group, club, or class shall not be used to pay the claims or obligations of any other group, club, or class.

**Payment of claims**

Sec. 13. It is the primary purpose of this Act to secure to the members of the associations and their beneficiaries the full and prompt payment of all claims according to the maximum benefit provided in their certificates. It is therefore required of all associations that all claims under certificates be paid in full within sixty (60) days after receipt of due proof of claims.

Written notice of claim given to the association shall be deemed due proof in the event the association fails upon receipt of notice to furnish the claimant, within fifteen (15) days, such forms as are usually furnished by it for filing claims.

Any association which shall become unable to pay its valid claims in full within sixty (60) days after due proofs are received, shall for the purpose of this Act be regarded as insolvent, and dealt with as is more fully provided hereinafter.

**Contests**

Sec. 14. It shall not be unlawful for an association to contest claims for valid reasons; but claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the association is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board shall cancel the certificate of authority of any association found to be operating fraudulently or improperly contesting its claims.

Reports regarding the cost of contests must be made under oath of an officer of the association, with the annual report of all associations to the Board.

**Assessment-as-needed groups**

Sec. 15. The provisions of this Act requiring the full payment of claims shall not apply to any groups, club, or class previously organized and now operating on the post-mortem or assessment-as-needed plan and any association having such a group, club, or class may continue to operate it on said plan so long as any such group, club, or class has a sufficient membership at the assessment rate charged to produce, and so long as it does produce, for the mortuary or relief fund at least fifty (50%) per cent of the maximum value of the largest policy in said group, club, or class. In the event the membership of any group, club or class is only sufficient in number to pay between fifty (50%) per cent and one hundred (100%) per cent of the maximum value, it shall be the duty of the officer of said association to have printed on each assessment notice the percentage of the maximum value of the certificate actually paid on the last death claim in said group, club, or class. Provided further, that no association and no group, club, or class in any association shall hereafter be organized to operate on the post-mortem or assessment-as-needed plan.

If on any assessment the amount realized is not sufficient to pay fifty (50%) per cent of the face of the certificate, the association shall be deemed insolvent and dealt with as hereinafter provided.

**Creation of new groups**

Sec. 16. In the creation of a new group, club, or class, an association may have six (6) months from the date of its creation within which to build said group, club, or class up to the required member-



ship to pay claims in full, provided in the interim the certificates provide for no more than a Five Hundred (\$500.00) Dollar benefit, unless the association has funds out of which it may lawfully make and actually does make the full payment of benefits in the interim. Creation of any new group shall be subject to advance approval by the Board of Insurance Commissioners.

#### Payments on certificates already in force

Sec. 17. If the payments of the members of any association coming within the scope of this Act, on certificates issued and in force when this Act takes effect, or the reinsurance or renewals of such certificates, shall prove insufficient to pay matured death and disability claims in the maximum amount stated in such policies or certificates, and to provide for the creation and maintenance of the funds required by its laws, such association may with the approval of the Board of Insurance Commissioners and after proper hearing before said Board provide for meeting such deficiency by additional, increased, or extra rates of payment, or by reduction in the maximum benefits stated in such policies or certificates then in force, or by both such increased payments and reduced maximum benefits, or the members may be given the option of agreeing to reduced maximum benefits, or of making increased payments.

#### Amending by-laws

Sec. 18. By-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered, must be mailed to all members. Such notices must contain full copies of the proposed changes in the by-laws and fair explanations of the intent and effect thereof.

#### Conservator

Sec. 19. If, upon an examination or at any other time, it appears to the Board of Insurance Commissioners that such association be insolvent, or its condition be, in the opinion of the Board, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such association appears to have exceeded its powers or failed to comply with the law, then the Board shall notify the association of its determination and said association shall have thirty (30) days under the supervision of the Board within which to comply with the requirements of the Board; and in the event of its failure to so comply within such time, the Board, acting for itself, or through a conservator appointed by the Life Insurance Commissioner for that purpose, shall immediately take charge of such association, and all of the property and effects thereof. If the Board is satisfied that such association can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Board, pending the election of new Directors and officers by the membership in such manner as the Board may determine, the same shall be done. If the Board, however, is satisfied that such association is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Board shall proceed to reinsure the outstanding liabilities in some solvent association or company, authorized to transact business in this State, or the Board shall

proceed through such conservator, to liquidate such association, or the Board may give notice to the Attorney General as provided under the general laws relating to insurance corporations. It shall be in the discretion of the Board to determine whether or not it will operate the association through a conservator, as provided above, or proceed to liquidate the association, as herein provided, or report it to the Attorney General. When the liabilities of an association are reinsured or liquidated, as herein provided, the Board shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the association so reinsured or liquidated. Where the Board lends its approval to the merger, transfer or consolidation of the membership of one association with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the association from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of associations reinsured or liquidated. No merger or transfer shall be approved unless the association assuming the members transferred or merged is operating under the supervision of the Board of Insurance Commissioners. The cost incident to the conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the association to be allowed and paid as the Board may determine.

**Special disability provision**

Sec. 20. If any of the provisions of this Act may appear obscure when applied to health, accident or disability provisions in certificates issued by associations authorized to issue health, accident or disability certificates, then the Board is directed to interpret same in accord with the expressed purpose and spirit of the Act looking to the full payment of claims, and at the same time preserving to members the benefit of the protection afforded by such association.

**Partial repeal of certain section**

Sec. 21. That Section 29, Chapter 274, Acts of the Forty-first Legislature, 1929, (page 563),<sup>1</sup> be and the same is hereby repealed, insofar as same is in conflict with the provisions hereof relative to burial associations.

<sup>1</sup> Article 4875a—29.

**Partial repeal of certain section**

Sec. 22. That part of Section 6, Chapter 245, Acts of the Forty-third Legislature, as amended by Chapter 257, Acts of the Forty-fifth Legislature,<sup>1</sup> exempting from its provisions any corporation, association or partnership, individual or joint stock company engaged in the undertaking business, or to any advertising corporation, association and/or partnership, individual, or joint stock company with whom they have contracts, be and the same is hereby repealed.

<sup>1</sup> Article 4859f § 6.

**Burial association**

Sec. 23. Any individual, individuals, firms, co-partnerships, corporations or associations doing the business of providing burial or funeral benefits, which under any circumstances may be payable partly or wholly in merchandise or services, not in excess of One Hundred and Fifty (\$150.00) Dollars, or the value thereof, are hereby declared to be burial companies, associations or societies, and shall organize under provisions of Chapter 274, Acts of the Forty-first Legislature, 1929, and amendments

thereto;<sup>1</sup> and shall operate under and be governed by Chapter 274, Acts of the Forty-first Legislature, 1929, and amendments thereto, and this Act. It shall be unlawful for any individual, individuals, firms, co-partnerships, corporations, or associations, other than those defined above, to engage in the business of providing burial or funeral benefits, which under any circumstances may be paid wholly or partly in merchandise or services.

<sup>1</sup> Article 4875a—1 et seq.

#### **Certificate of burial association**

Sec. 24. Policies or certificates issued by burial associations shall provide for payment of the benefit in certain stipulated merchandise and burial service, which shall be scheduled in the policy or certificate and approved by the Board of Insurance Commissioners as being of the reasonable value as stated in the face of the policy, unless the insured shall at the time said policy is issued elect to have same paid in cash. The policy shall show in writing the election made. If the association issuing said policy shall fail or refuse to furnish the merchandise and services provided for in the policy, same shall be paid in cash.

#### **Rules and regulations**

Sec. 25. The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this Act.

#### **Mutual fire insurance companies not affected**

Sec. 26. Nothing in this Act shall ever be construed to include or affect in any manner mutual fire insurance companies.

#### **Penalty; unlawful conversion**

Sec. 27. If any Director, officer, agent, employee, attorney at law or attorney in fact, of any association under this Act, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such association, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

#### **Penalty; diversion of special funds**

Sec. 28. If any Director, officer, agent, employee, attorney at law, or attorney in fact of any association under this Act, shall willfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any association under this Act, which has been set apart by law or by any valid rule or regulation of the Board of Insurance Commissioners of the State of Texas for a specific use, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

#### **Penalty; false reports**

Sec. 29. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such association whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the association. If any officer, Director,

agent, employee, attorney at law or attorney in fact, of any association under this Act, shall willfully make any false affidavit in connection with the requirements of this Act, he shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

**Penalty; violation of board order**

Sec. 30. If any Director, officer, agent, employee, or attorney at law or attorney in fact of any association under this Act, shall willfully refuse or fail to comply with any lawful order of the Board of Insurance Commissioners of this State he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

**Penalty; violation of other provisions of act**

Sec. 31. If any Director, officer, agent, employee or attorney at law or attorney in fact of any association under this Act, or any other person, shall violate any of the provisions of this Act not specifically set out in Sections 26, 27, 28, and 29 of this Act, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

**Effective date**

Sec. 32. Upon proper showing to the Board of inability of associations to comply with this Act immediately, associations shall have until January 1, 1940, to bring themselves to full compliance with this law in all particulars. By such date, in the event they shall not have done so, they shall be regarded as insolvent as provided herein, and dealt with accordingly. It is specially provided that if associations cannot so arrange their affairs as to make full payment of claims as herein required by such date, they may reduce the benefits of the outstanding certificates by appropriate action having the approval of the Board, so as to make possible full payment of claims. All members must be given prompt notice of such amendment of such certificates.

**Fees appropriated**

Sec. 35. All fees paid to the Board of Insurance Commissioners by all associations regulated by this Act shall be and the same are here and now appropriated for the balance of the fiscal year ending August 31st, 1939, to the use and benefit of the Life Insurance Division of the Board of Insurance Commissioners, to be used by the Life Insurance Commissioner for the purpose of enforcing and carrying out the provisions of this Act and other laws relating to the regulation and supervision of such associations; provided, however, that thereafter such fees shall be expended under such limitations as the Legislature may designate in the general departmental appropriation bill; such fees to be deposited in the State Treasury as a special fund to be used as and for the purposes aforesaid and are here and now appropriated for such purposes and all laws or parts of laws to the contrary are here and now expressly repealed to the extent of such conflict only. Acts 1939, 46th Leg., p. 401.

Effective May 12, 1939.

Sections 33 and 34 of the Act read as follows:

"Sec. 33. All laws or parts of laws in conflict with the provisions of this Act are

hereby expressly repealed to the extent of such conflict.

"Sec. 34. Constitutionality. The provisions of this Act are severable, and in the event the courts declare any part of it un-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

constitutional, the other provisions of the Act shall nevertheless remain in full force."

Section 36 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act applying and relating to and embracing all insurance companies and associations, whether incorporated or not, issuing policies or certificates of insurance on the lives of persons, or providing health and accident benefits upon the so-called mutual assessment plan, or whose funds are derived from assessments upon policyholders or members, applying and including all life, health and accident companies or associations which do not come within the provisions of Chapter 3, Chapter 5, Chapter 7, Chapter 8, Chapter 9, Chapter 18, Chapter 19 or Chapter 20, Title 78 of the Revised Civil Statutes of Texas, and include local mutual aid associations; statewide life; or life, health and accident associations; mutual assessment life, health and accident associations; burial associations; and similar concerns, by whatsoever name or class designated, whether specifically named herein or not; defining terms and words used in the Act, and giving authority to the Board of Insurance Commissioners of the State of Texas with reference to the names of associations formed under said Act and full power with reference to the issuance of certificates and the regulation of such companies, or associations, whether incorporated or not; authorizing the Board of Insurance Commissioners of the State of Texas to remove officers, employees and others under certain circumstances; requiring bonds of officers and employees, and requiring deposits with the State Treasurer, through the Board of Insurance Commissioners, of cash or convertible securities as provided in said Act; requiring the keeping of a list of members and proper statistical records, and records as to amounts paid on assessments and the funds distributed between expense and mortuary or relief funds and the amounts paid; prohibiting the transferring of any group or part thereof under certain circumstances; requiring the keeping of books and records as required by this Act; providing for forms of policies or certificates issued and what the same shall and shall not contain; giving power and authority to the Board of Insurance Commissioners with reference to the approval and disapproval thereof; making it unlawful to assume liability on any life insurance risk on any one life in an amount in excess of Five Thousand (\$5,000.00) Dollars; providing for assessments as will meet the reasonable operating expense of the association, and providing for the payment in full of the claims arising under certificates issued, and providing for the filing with the Board of Insurance Commissioners rate schedules; providing for the dividing of funds, one shall be the mortuary or relief fund and the other funds shall be the expense funds, from which expenses shall be paid, and the placing of at least sixty (60%)

per cent of assessments collected in the mortuary or relief fund and for the investment of the mortuary or relief funds; requiring the keeping of by-laws, and specifically designating certain provisions to be inserted therein; providing for separate records to be kept for the mortuary or relief funds of each group, club or class, and the mortuary or relief funds of one group, club or class, and prohibiting the use of the funds of one group, club or class to be used to pay the claims or obligations of any other group, club or class; requiring the payment of claims in full within a certain period; providing for a notice of claims and granting to the Board of Insurance Commissioners of the State of Texas full authority to cancel certificates under certain conditions; making exceptions with reference to the payment of claims in full under certain conditions; providing for the creation of new groups, clubs and classes, and the payment of benefits; providing for payment on certificates already in force and making provisions with reference to amending the by-laws of the association; providing for the appointment of a conservator under certain conditions and management by the Board of Insurance Commissioners of the State of Texas through a conservator, authorized to be appointed under this Act; and providing for reinsurance and providing for liquidation and for reports to the Attorney General with reference to the forfeiture of cancellation of the charter of associations reinsured or liquidated; repealing Section 29, Chapter 274, Acts of the Forty-first Legislature, 1929, page 563, insofar as same is in conflict with the provisions of this Act relative to burial associations and repealing parts of Section 6, Chapter 245, Acts of the Forty-third Legislature as amended by Chapter 257, Acts of the Forty-fifth Legislature, exempting from its provisions any corporation, association or partnership, individual or joint stock company engaged in the undertaking business or to any advertising corporation, association and/or membership, individual, or joint stock company, with whom they have contracts; defining "burial associations," and making provisions for the regulation thereof; authorizing organizations thereof under Chapter 274, Acts of the Forty-first Legislature, 1929, and amendments thereto; providing for their operation under Chapter 274, Acts of the Forty-first Legislature, 1929, and amendments thereto, and this Act; making it unlawful for any individuals, firms, copartnerships, corporations or associations, other than those defined in this Act, to engage in the business of providing burial or funeral benefits, which in any event may be paid wholly or partly in merchandise or services; and providing for certain provisions in the policies and/or certificates issued by burial associations and for the payment by said associations in cash or by merchandise and burial service; authorizing the promulgation of rules and regulations by the Board of In-

surance Commissioners of the State of Texas; providing that nothing in the Act shall be construed to include or affect mutual fire insurance companies; affixing certain penalties for violations of the Act; giving until January 1, 1940, to comply with this Act, and providing for full payment of claims and the reduction of the benefits of outstanding certificates under certain circumstances; repealing all laws in conflict with the provisions of this Act; containing a provision

that if any part of this Act be held unconstitutional, the remaining part shall nevertheless remain in full force and effect; providing that the fees collected under this Act paid to the Board of Insurance Commissioners shall be used by the Life Insurance Commissioner toward the enforcement of and carrying out of the purposes of this Act, and declaring an emergency. Acts 1939, 46th Leg., p. 401.

## TITLE 82—JUVENILES

Art.

5119a. Change in name of institution [New].

5119b. Name of Girls' Training School changed to Gainesville State School for Girls [New].

5139A. Juvenile Boards in counties of 64,000 to 65,000 population [New].

Art.

5142b. Juvenile officers in counties of 320,000 and not less than 220,000 [New].

5143a. Juvenile Training Schools for delinquent children—"Delinquent Child" [New].

### Art. 5119a. Change in name of institution

That the name of the State Juvenile Training School which is located at Gatesville, Texas, be, and the same is hereby changed and shall hereafter be known and designated as the Gatesville State School for Boys. Acts 1939, 46th Leg., p. 432, § 1.

Effective May 8, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act changing the name of the State Juvenile Training School to be hereafter known as the Gatesville State School for Boys; and declaring an emergency. Acts 1939, 46th Leg., p. 432.

### Art. 5119b. Name of Girls' Training School changed to Gainesville State School for Girls

That the name of the Girls' Training School which is located at Gainesville, Texas, be, and the same is hereby, changed and shall hereafter be known and designated as the Gainesville State School for Girls. Acts 1939, 46th Leg., p. 431, § 1.

Effective June 1, 1939.

Section 2 of Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act changing the name of the Girls' Training School to be hereafter known as the Gainesville State School for Girls; and declaring an emergency. Acts 1939, 46th Leg., p. 431.

### Art. 5125. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6]

Effective June 9, 1937.

Prior to its repeal this article was amended by Acts 1927, 40th Leg., p. 316, ch. 214.

### Art. 5132. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6]

Effective June 9, 1937.

### Art. 5135. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6]

Effective June 9, 1937.

**Art. 5139A. Juvenile Boards in counties of 64,000 to 65,000 population**

In any county having a population of sixty-four thousand (64,000) inhabitants and not more than sixty-five thousand (65,000) inhabitants according to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The annual salary of each of the Judges of the District Courts of such county as members of said Board shall be Six Hundred Dollars (\$600) in addition to that paid other District Judges of this State, said additional salary to be paid monthly out of the General Funds of such county, upon the order of the Commissioners Court. Added Acts 1939, 46th Leg., Spec. L., p. 853, § 1.

Effective Feb. 16, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 5142. Qualifications, duties, appointment, salaries and removal**

There may be appointed, in the manner hereinafter provided, discreet persons of good moral character to serve as juvenile officers for periods not to exceed two (2) years from date of appointment.

Such officers shall have authority and it shall be their duty to make investigations of all cases referred to them as such by such Board; to be present in Court and to represent the interest of the juvenile when the case is heard, and to furnish to the Court and such Board any information and assistance as such Board may require, and to take charge of any child before and after the trial and to perform such other services for the child as may be required by the Court or said Board, and such juvenile officers shall be vested with all the power and authority of police officers or sheriffs incident to their offices.

The Clerk of the Court shall, when practicable, notify such juvenile officer when any juvenile is to be brought before the Court. It shall be the duty of such juvenile officer to make investigation of any such case, to be present in Court to represent the interest of the juvenile when the case is tried; to furnish to such Court such information and assistance as the Court may require and to take charge of any juvenile before and after the trial as the Court may direct. In counties having a population of less than seventy-five thousand (75,000), one juvenile officer may be appointed by the Commissioners Court, when in their opinion such officer is needed, who shall receive a compensation not to exceed One Hundred and Twenty-five Dollars (\$125) per month. Provided that in counties having a population of not less than thirty-five thousand (35,000), and not more than one hundred thousand (100,000), and containing a city of more than twenty-nine thousand (29,000) population, one juvenile officer may be appointed by the County Judge with the approval of the Commissioners Court, when in their opinion the services of such officers are needed whose salary shall not exceed Two Hundred Dollars (\$200) per month and expenses not to exceed Two Hundred Dollars (\$200) per year.

Provided that in counties having a population of one hundred thousand (100,000) and less than one hundred and fifty thousand (150,000), the County Judge may appoint a juvenile officer, subject to the approval of the County Juvenile Board for a period not to exceed two (2) years from date of appointment at a salary not to exceed Two Hundred and Fifty Dollars (\$250) per month, and expenses not to exceed Two Hundred Dollars (\$200) per year. Such juvenile officers may select assistant juvenile officers, subject to the approval of the County Judge and the County Juvenile Board, the number not to exceed one assistant juvenile officer to

each twenty-five thousand (25,000) population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law, in Article 3902, Revised Civil Statutes of Texas of 1925, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses, each, not to exceed Two Hundred Dollars (\$200) per year.

Provided that in counties having a population of one hundred and fifty thousand (150,000) or more, and containing a city of one hundred thousand (100,000) or more, the County Judge may appoint a juvenile officer, subject to the approval of the County Juvenile Board, to serve for a period not to exceed two (2) years from the date of appointment, and whose extra duties shall be to make investigations for the Commissioners Court on applications for charity, or admittance into detention homes or orphan homes created by such counties. The salary of such juvenile officer shall not exceed Three Hundred Dollars (\$300) per month, his allowance for expenses not to exceed Two Hundred Dollars (\$200) a year. Such juvenile officer may select assistant juvenile officers, subject to the approval of the County Judge and the County Juvenile Board, the number of such assistant juvenile officers not to exceed one assistant to each twenty-five thousand (25,000) population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law in Article 3902, of the Revised Civil Statutes of Texas, 1925, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses not to exceed Two Hundred Dollars (\$200) per year each.

In the appointment of all juvenile officers, the County Judge and the County Juvenile Board may select for such office any school attendance officer or officers of the county, or of school districts in the county, that may be authorized by law, and the salary and expense of such joint juvenile officer or officers and attendance officers shall be paid jointly by the county and school authorities upon any basis of division they may agree upon.

Salaries of paid juvenile officers and their assistants shall be fixed by the Commissioners Court, not to exceed the sums herein mentioned, and any bill for the expenses not exceeding the sums herein provided for, shall be certified by the County Judge as being necessary in the performance of the duties of a juvenile officer. The Commissioners Court of the county shall provide the necessary funds for the payment of salaries and expenses of the juvenile officers provided for in this Act. The appointment of said juvenile officers shall be filed in the office of the Clerk of the County Court. Juvenile officers shall take oath to perform their duties and file such oath in the office of the County Clerk. As a basis for reckoning the population of any county the preceding Federal Census shall be used.

Provided that any juvenile officer appointed under the provisions of this Act may be removed from office by the power appointing him, at any time. [As amended Acts 1937, 45th Leg., p. 545, ch. 269, § 1.]

Amendment of 1937, effective May 5, 1937, declared an emergency making the Act effective on and after its passage. It does

Section 2 of the amendatory Act of 1937 not show the Governor's approval.

#### Art. 5142b. Juvenile officers in counties of 320,000 and not less than 220,000

Section 1. That the provisions of this Act shall apply to and affect such counties only in the State of Texas as have, according to the last preceding Federal Census, a population of not more than three hundred and twenty thousand (320,000) inhabitants, and not less than two hundred and



twenty thousand (220,000) inhabitants, according to the last preceding or any future Federal Census.

#### **Juvenile board**

Sec. 2. The Juvenile Board of such counties shall be composed of the Judges of the several District and Criminal District Courts, thereof, together with the County Judge thereof.

#### **Chief probation officer and assistants; appointment**

Sec. 3. There shall be one Chief Probation Officer, and such number of Assistants not exceeding eight as shall be authorized by the Juvenile Board. Said Chief Probation Officer and Assistants to be appointed by the County Judge, and confirmed by the Juvenile Board, and such power of appointment and confirmation of such officers as conferred by this Act shall not be effective until the expiration of the terms of offices of the present incumbents of such offices.

#### **Terms of office**

Sec. 4. The term of office of Chief Probation Officer and Assistant Probation Officers shall be for a period of two years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove any Juvenile Officer, whether Chief or Assistant.

#### **Compensation**

Sec. 5. The compensation of all Probation Officers shall be fixed by the County Commissioners' Court, which shall not exceed Three Hundred (\$300.00) Dollars per month for the Chief Probation Officer, and not to exceed One Hundred and Seventy-five (\$175.00) Dollars per month for the First Assistant Probation Officer, and not to exceed One Hundred and Fifty (\$150.00) Dollars per month for all other assistants.

#### **Juvenile Board; powers**

Sec. 6. The Juvenile Board shall have direction and control over all Juvenile Officers and may make rules and regulations relating thereto.

#### **Supervision of institutions by Juvenile Board; superintendents**

Sec. 7. That all homes, schools, farms and any and all other institutions or places maintained and used chiefly by the county for the training, education, support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the Superintendent of each such institutions shall be appointed by the County Judge for a term of two years and each such appointment confirmed by the Juvenile Board. The salaries of all of the Superintendents shall be fixed by the County Commissioners' Court.

#### **Records and visitation by Probation Officer**

Sec. 8. It shall be the duty of the Probation Officers to keep a record which will, at all times, show the names of all dependent or delinquent juveniles within their county, and the names and addresses of the person having custody of any such juveniles; and visitations by such officers shall be made at such reasonable times as may be directed by the Juvenile Board, and written report shall be made to the Juvenile Board showing such facts relating to the environment, treatment, education and welfare of such minors as shall be directed by the Juvenile Board.

#### **Juvenile Court to direct change of custody of juveniles**

Sec. 9. It shall be unlawful for any person or institution having the lawful custody of any such juveniles to deliver such juveniles to the cus-

tody of another person without an order of court of competent jurisdiction in said county sitting as a Juvenile Court authorizing same, and a copy of such order shall be transmitted to the Juvenile Officers of such county.

**Visitations by Juvenile Board; orders and regulations**

Sec. 10. It shall be the duty of the members of the Juvenile Board of said county to make visitations, at reasonable intervals, to the institutions in said county in which dependent or delinquent juveniles may be kept, maintained or educated; and a majority of said Juvenile Board may adopt any order or regulation pertaining to the welfare of such juveniles which may be found necessary or for the welfare of such juveniles, and it shall be the duty of all persons having such juveniles in charge to comply with such order or regulation. Any such order or regulation shall be entered of record by the Chief Probation Officer in a book kept for such purpose, and shall be open for public inspection, and copy of any such order or regulation certified by such Probation Officer shall be delivered to the Superintendent, or person in charge, or control of any such institution; and said Board may by order or regulation require of the Superintendent, or person in charge, of such juveniles in said county reports giving said Board such information relating to such juveniles or such institutions as may be required by such Juvenile Board.

**Suspension of assistants by Chief Probation Officer**

Sec. 11. The Chief Probation Officer may at any time, with the approval of the Juvenile Board, for good cause shown, suspend, or entirely terminate the employment and service of any assistant after such assistant has been duly notified and afforded an opportunity to be heard by said Juvenile Board.

**Bonds of officers**

Sec. 12. The Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any Juvenile Officer or Superintendent of any of the institutions enumerated in this Act, in such sum as may be determined by said Board.

**Investigations and reports by Probation Officer; record of receipts and expenditures**

Sec. 13. The Juvenile Board, or any member thereof, may at any time require any Probation Officer to make investigation and report the facts relating to the welfare of any minor, or any child abandonment or desertion cases or proceedings, and may require any such officer to receive and disburse under orders of the Board for the benefit of any such minor any sums of money required to be paid into Court for the maintenance of such minor; and such officer shall enter all such receipts and disbursements in a well-bound book kept for such purpose in the Probation Office subject to public inspection, showing all such receipts and disbursements, and the same shall be audited by the County Auditor; and the bond required to be executed under the provisions of this Act shall be liable for the faithful performance of all such duties.

**Assistant district attorney to represent Juvenile Board and Probation Officers**

Sec. 14. The District Attorney and the Criminal District Attorney of all such counties coming under the provisions of this law, is hereby authorized and directed, to assign an Assistant District Attorney in his office for the special duty of representing the Juvenile Board and the Probation Officers in safeguarding and protecting the rights relating to the

welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

**Compensation of Juvenile Board members**

Sec. 15. The members composing said Juvenile Board in such counties, on account of the additional duties hereby imposed on them, are each hereby allowed an additional compensation of Seventy-five (\$75.00) Dollars per month to be paid by the Commissioners' Court in such counties, and the same to be in addition to all other compensation now allowed by law to such officers.

**Partial invalidity clause**

Sec. 16. It is further enacted that if any section, clause or part of this bill is found to be unconstitutional; or invalid, it is hereby declared to be the purpose and intention of the Legislature that such fact shall not in any manner invalidate or impair the remaining portions of this Act.

It is further provided that all laws and parts of laws in conflict with the provisions of this bill be and the same are hereby repealed to the extent of such conflict only. Acts 1937, 45th Leg., p. 76, ch. 46.

Effective March 16, 1937.

Section 17 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for a Juvenile Board and the appointment of a Chief Probation Officer and Assistant Probation Officers and Superintendents of certain institutions in counties having a population of not more than three hundred and twenty thousand (320,000) inhabitants, and not less than two hundred and twenty thousand (220,000) inhabitants, according to the last preceding or any future Federal Census; and providing that the appointment and election of the Chief Probation Officer and Assistants and Superintendents of institutions as herein provided for in such counties shall be appointed by the County Judge, and confirmed by such Juvenile Board; provided, however, that such power of appointment and election of such officers, as conferred by this Act, shall not be effective until the expiration of the terms of office of the present incumbents of such offices; and providing for the bonding of such officers; and providing that the Juvenile Board in any such counties shall have the power to suspend or remove any such Juvenile Officers for good cause; fixing the term of service and compensation of all such officers; giving the Juvenile Board in such counties the direction and control over all such officers and the right to make rules and regulations relating thereto; providing that such Probation Officer shall keep a record showing the names of all dependent or delinquent juveniles within such county and directing that visitation shall be made by such officers to such juveniles, and that certain facts relative to their welfare be ascertained and reported to the Juvenile Board, all as may be ordered by said Board; providing that it shall be unlawful for any person or institution having law-

ful custody of any such juveniles in such county to deliver such dependent or delinquent juveniles to any other person without first procuring an order of a juvenile court in such county authorizing the same; providing that it shall be the duty of the members composing the Juvenile Board to make visitations at reasonable intervals to any institutions in such counties where such juveniles are kept, educated or maintained, and giving the Juvenile Board authority to make any order or regulation which may be found necessary or for the welfare of such juveniles; making it the duty of the Superintendent or person in charge to comply with the same; providing that any such order or regulation shall be recorded by the Probation Officers in a book to be kept for such purpose to be open to the inspection of the public, and providing for the manner of certifying such orders; providing for an additional compensation for each member composing the said Juvenile Board in addition to all compensation now allowed by law, such compensation to be paid by such county; and providing that it shall be the duty of any such juvenile officer when ordered by a District Court, or Criminal District Court, or the Judge of any such Court in such county, or the County Judge of such county to make investigation and report the facts in any case or proceeding where the welfare of a minor is involved; making it the duty of such officer when so directed by such court or the Judge thereof to receive, collect and disburse any sums of money for the maintenance of minors, to keep a record open to the public of such transactions, and that the County Auditor shall audit such accounts; providing that if any section or part of this bill is found to be unconstitutional or invalid that it is declared to be the purpose and intention of the Legislature that the other portions shall nevertheless have been passed; and for the repeal of all laws and parts of laws in conflict here-

with, but to that extent only and providing for an emergency, and that this Act become effective from and after the date of its passage. It is further provided that it is not the purpose or intention of the Legislature to create any new office by the

provisions of this Act, but to impose additional duties on the officers composing such Juvenile Board, and declaring an emergency. [Acts 1937, 45th Leg., p. 76, ch. 46.]

### Art. 5143a. Juvenile Training Schools for delinquent children—"Delinquent Child"

Section 1. The term "delinquent child" shall include any boy between the ages of ten (10) and seventeen (17) years and/or any girl between the ages of ten (10) and eighteen (18) years who violates any penal law of this State, or who is incorrigible, or who knowingly associates with thieves, vicious or immoral persons, or who knowingly visits a house of ill repute, or who is guilty of immoral conduct in a public place, or who knowingly patronizes or visits any place where a gambling device is being operated, or who habitually wanders about the streets in the nighttime without being on any business or occupation or who habitually wanders about any railroad yard or tracks, or habitually jumps on and off of moving trains or who enters any car or engine without lawful authority. Any such child committing any of the acts herein mentioned shall be deemed a delinquent child, and shall be proceeded against as such in the manner hereinafter provided, and as otherwise so provided by the law, so as to effect the object of this law.

#### Who received at said schools

Sec. 2. Any male person between the ages of ten (10) and seventeen (17) years who shall be lawfully committed to the State Juvenile Training School as a delinquent child, and not possessing any of the disqualifications hereinafter mentioned, shall be received as an inmate of said training school.

#### Girls' Training School

Sec. 3. The Girls' Training School for delinquent girls shall be under the control and management of the State Board of Control which shall provide wholesome and proper quarters and exercise and diversion, and shall make provisions for training in all of the useful arts and sciences to which women are adapted, to prepare them for future womanhood and independence, and shall provide instruction in nursing, sanitation and hygiene.

#### Juveniles disqualified

Sec. 4. Whenever any girl between the ages of ten (10) and eighteen (18) years or boy between the ages of ten (10) and seventeen (17) years shall be tried or brought before any juvenile court upon indictment or information or before the District Court on petition of any person in this State or the Humane Society or any institution of a similar purpose or character, charged with being a delinquent child as this term is herein defined, the Court may, if in the opinion of the judge, the Juvenile Training School is the proper place for him, if a boy, or the Girls' Training School is the proper place for her, if a girl, commit such person to the Juvenile Training School for boys or the Girls' Training School for girls during the minority of said person. No person shall be committed to either school who is feeble-minded, epileptic or insane, but if so committed the State Board of Control shall have the authority to immediately transfer to the proper eleemosynary institution. Any person committed to either school who is afflicted with

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a venereal, tubercular or other communicable disease shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with the other wards until cured of said disease or diseases. No person shall be admitted to either of said schools until he or she has been examined by the school physician and such physician has issued a certificate showing said person's exact state or condition in reference to said qualifications hereinabove enumerated.

#### Unruly child excluded—transfers

Sec. 5. All juvenile courts shall give preference to those children of tender age, and said courts shall not commit to said Home for Dependent and Neglected Children any children under the age of sixteen (16) years who are known to be habitual violators of the laws of this State or who have been inmates of any State juvenile correctional school, provided however, that the State Board of Control is hereby authorized to transfer to this Home from any State juvenile correctional school any child of tender years whose record is satisfactory, upon the recommendation of the superintendent of such correctional school or any interested citizen. If the conduct of any child in said Home becomes sufficiently uncontrollable as to impair the better interests of other children in the Home, the Board, upon application of the superintendent, shall have the authority to transfer such child to any State juvenile correctional school admitting juveniles of similar age and sex, and it shall be the duty of the respective superintendents to transfer, transport and admit such child. Said Board may transfer children from said Juvenile Training Schools or said Home to the State Orphans' Home and from said Orphans' Home to said Training Schools. [Acts 1937, 45th Leg., p. 1328, ch. 492.]

Effective June 9, 1937.

Section 6 of Acts 1937, 45th Leg., p. 1328, ch. 492, repeals Articles 3258, 5125, 5132, and 5135 of the Revised Civil Statutes of 1925, and Article 1083 of the Code of Criminal Procedure. Section 7 of the Act of 1937 reads as follows: "In the event any sentence, line, portion or paragraph of this Act shall be held to be invalid or declared to be unconstitutional such shall not affect the valid portions hereof, and it shall be and is the intent of the Legislature to enact the valid portions thereof, irrespective of any invalid portions."

Section 8 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act defining the term "delinquent child" and providing that such shall be proceeded against as such in the manner provided by law so as to effect the object of this law, and providing for the bringing of such before a juvenile court upon indictment or information, or before the district court on the petition of any person, or the Humane Society, or an institution of similar purposes or character, and for the commitment of such to the State Juvenile Training School if a boy, and to the Girls' Training School, if a girl, during minority; providing that no feeble-minded, epileptic or insane child

shall be committed to either and if so committed may be transferred to the proper institution, providing for the isolation of any child afflicted with venereal, tubercular or other communicable disease until cured of said disease or diseases; providing for the examination upon admission, and the issuance of a certificate showing the exact condition or state in reference to the qualifications above enumerated of each one to be admitted; providing for the exclusion of unruly children from the Home for Dependent and Neglected Children and the transfer from the Training Schools to the Home for Dependent and Neglected Children and the State Orphans Home and from the Home for Dependent and Neglected Children and the Orphans Home to the Training Schools and from the Home for Dependent and Neglected Children to the State Orphans Home; repealing Articles 3258, 5125, 5132 and 5135 of the Revised Civil Statutes of 1925, and Article 1083 of the Code of Criminal Procedure; providing that in the event any part or portion of this Act shall be declared invalid or unconstitutional such declaration shall not affect the remaining portion thereof and the valid portions thereof shall be declared the Act of the Legislature; and declaring an emergency. [Acts 1937, 45th Leg., p. 1328, ch. 492.]

## TITLE 83—LABOR

Chap.

14. Unemployment Compensation [New].

15. Inspection of Steam Boilers [New].

### CHAPTER THREE—PAYMENT OF WAGES

Art.

5159b. Coupons, chips, scrip, store orders, or other evidence of indebtedness to laborers to be redeemable on demand in money [New].

**Art. 5159b. Coupons, chips, scrip, store orders, or other evidence of indebtedness to laborers to be redeemable on demand in money**

Section 1. That all persons, firms, partnerships, or corporations using coupons, chips, scrip, punchouts, store orders, or other evidence of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe, or bona fide holder in good and lawful money of the United States; provided, the same is presented and redemption demanded of such person, firm, partnership, or corporation using same as aforesaid, at a regular payday, such redemption to be at the face value of said scrip, chips, punchouts, coupons, store order, or other evidence of indebtedness; provided further, said face value shall be in cash the same as its purchasing power in goods, wares, and merchandise at the commissary store or other repository of such persons, firms, partnerships, or corporations aforesaid.

#### Actions to redeem; penalty

Sec. 2. Any employe, laborer, or bona fide holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, chips, coupon, punchout, store order, or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, partnership, or corporation to redeem the same in good and lawful money of the United States the owner of any such evidence of indebtedness may maintain in his, her, or their own name an action before any Court of competent jurisdiction against such person, firm, partnership, or corporation, using same as aforesaid for the recovery of the value of such coupon, scrip, chips, punchout, store order, or other evidence of indebtedness, as defined in Section 1 of this Act. If the plaintiff shall recover judgment in such case, it shall include a penalty of twenty-five (25) per cent of the amount due and a reasonable fee for the plaintiff's attorney for his services in the suit, all of which, as well as the costs, shall be taxed against the defendant. Acts 1937, 45th Leg., p. 705, ch. 354.

Effective May 15, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act providing that all persons, firms, partnerships, or corporations using coupons, chips, scrip, punchouts, store orders, or other evidence of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demand-

ed, redeem the same in the hands of such laborer, employe, or bona fide holder in good and lawful money of the United States; provided, the same is presented and redemption demanded of such person, firm, partnership, or corporation using same as aforesaid, at a regular payday, such redemption to be at the face value of said scrip, chips, punchouts, coupons, store orders, or other evidence of indebtedness; provided further, said face value

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shall be in cash the same as its purchasing power in goods, wares, and merchandise at the commissary store or other repository of such persons, firms, partner-

ships, or corporations aforesaid; and providing penalties for failure to redeem; and declaring an emergency. [Acts 1937, 45th Leg., p. 705, ch. 354.]

## CHAPTER TEN A—TEXAS RELIEF COMMISSION

### [Art. 5190a. Creation and term of office of commission]

Sections 20 and 21 of said Act being penal are published as Penal Code, art. 107c. Rights, powers, and duties of Texas Re-

lief Commission transferred to State Department of Public Welfare, see art. 695c, § 9.

## CHAPTER THIRTEEN—EMPLOYMENT AGENTS

Art.

5221a—3. Political subdivisions may contract with State Employment Service [New].

### Art. 5215. Fees

No fee nor other charge shall be made by any employment agent or agency for registration of applicants for employment, and where a fee is charged for obtaining employment, such fee shall not be collected nor received until the applicant has obtained and accepted employment, and all such fees or charges shall be agreed to and stipulated in the application at the time such employment agent registers such applicant. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1895, ch. 21, § 1.]

Effective Nov. 3, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

### Art. 5216. Receipt forms prescribed

A receipt shall be given by the employment agent to all applicants for all fees collected from such applicants. The form of such receipt shall be prescribed by the Commissioner of Labor and shall contain the name of the applicant, the amount of the fee paid, the date, the character of the work or the position secured, the name of the employer, together with his post-office address and the location of the work the applicant is to perform. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1895, ch. 21, § 1.]

Effective Nov. 3, 1937.

### Art. 5221a—3. Political subdivisions may contract with State Employment Service

The Commissioners Court of any county of this State or the governing body of any other political subdivision of this State is authorized to enter into agreements with the agents of the Texas State Employment Service for the purpose of establishing or maintaining or assisting in the establishing or maintaining of a free public employment service within such county or political subdivision, upon such terms and conditions as may be agreed upon by the Commissioners Court or other governing body and the agent of the Texas State Employment Service, and may employ such means and may appropriate and expend such sums of money as may be necessary to effectively establish and carry on such free public employment service in such county or political subdivision. As a part of such agreement the Commissioners Court or governing body of any other political subdivision of this State may enter into agreements with

the Texas State Employment Service or its agents and as a part of such agreement may provide for the payment of agreed sums of money for rent of premises, payment for services rendered, purchase of equipment, or other purposes as may be deemed advisable by said Commissioners Court or other governing body. Acts 1939, 46th Leg., p. 461, § 1.

Effective May 22, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the Commissioners Court of any county in this State or the governing body of any other subdivision of this State to enter into agreements with

the Texas State Employment Service for the establishment and maintenance of a free public employment service within such county or political subdivision and authorizing the Commissioners Court of any county or the governing body of any other political subdivision to appropriate and expend moneys for such purpose; and declaring an emergency. Acts 1939, 46th Leg., p. 461.

## CHAPTER FOURTEEN—UNEMPLOYMENT COMPENSATION [New.]

**Art.**

- 5221b—1. Benefits; amount and payment; duration [New].
- 5221b—1a. Payment of benefits [New].
- 5221b—2. Benefit eligibility conditions [New].
- 5221b—3. Disqualification for benefits [New].
- 5221b—4. Claims for benefits; review of decisions; appeals; procedure [New].
- 5221b—5. Contributions [New].
- 5221b—6. Duration of coverage [New].
- 5221b—6a. Seasonal industry; definitions; duration of coverage; rules and regulations of Commission [New].
- 5221b—7. Unemployment compensation fund [New].
- 5221b—7a. Transfer of funds [New].
- 5221b—8. Unemployment Compensation Commission [New].
- 5221b—9. Administration [New].

**Art.**

- 5221b—9a. Use of records [New].
- 5221b—10. Employment service [New].
- 5221b—11. Unemployment Compensation Administration Fund [New].
- 5221b—12. Collection of contributions [New].
- 5221b—13. Protection of rights and benefits [New].
- 5221b—14. Penalties [New].
- 5221b—15. Representation in court [New].
- 5221b—15a. Reciprocal arrangements [New].
- 5221b—16. Nonliability of state [New].
- 5221b—17. Definitions [New].
- 5221b—17a. Repeal; saving clause [New].
- 5221b—18. Political activities [New].
- 5221b—19. Repeal or amendment [New].
- 5221b—20. Partial invalidity; separability of provisions [New].
- 5221b—21. Powers of Commission [New].
- 5221b—22. Termination of act [New].
- 5221b—23. New; Expired.

### Art. 5221b—1. Benefits; amount and payment; duration.

(a) **Payment of Benefits:** On and after January 1, 1938, benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Commission may prescribe. All benefits shall be computed to the nearest multiple of fifty (50) cents.

(b) **Benefit Amount for Total Unemployment:** Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one-thirteenth ( $\frac{1}{13}$ ) of his wages earned from employment by employers during that quarter in his base period in which such wages were highest, but not more than Thirty (\$30.00) Dollars per benefit period, nor less than Ten (\$10.00) Dollars per benefit period.

(c) **Benefit for Partial Unemployment:** Each eligible individual who is partially unemployed in any benefit period shall be paid with respect to such benefit period a partial benefit, provided that such individual shall meet the requirements of Section 4(a) of this Act.<sup>1</sup> Such partial benefit shall be the benefit amount plus Four (\$4.00) Dollars less the wages received during such benefit period. If such partial benefit for



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any benefit period equals less than Two (\$2.00) Dollars, it shall not be payable unless and until the accumulated total of benefits payable to such individual with respect to benefit periods occurring within the fourteen (14) preceding weeks equals Two (\$2.00) Dollars or more.

(d) Duration of Benefits: The Commission shall compute wage credits for each individual by crediting him with the wages earned by him for employment by employers during each quarter, or Four Hundred (\$400.00) Dollars, whichever is the lesser. Benefits paid to any eligible individual shall be charged against the wage credits earned during his base period, at the rate of one-fifth ( $\frac{1}{5}$ ) of such wage credits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of: (1) eight (8) times his benefit amount; (2) one-fifth ( $\frac{1}{5}$ ) of such uncharged wage credits with respect to his base period. Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 3, as amended Acts 1937, 45th Leg., p. 121, ch. 67, § 1; Acts 1939, 46th Leg., p. 436, § 1.

1 Article 5221b—2.

Articles 5221b—1 to 5221b—22 effective Oct. 27, 1936.

Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 19-a, as added Acts 1939, 46th Leg., p. 436, § 11, read as follows:

"Except as otherwise provided herein, this Act shall become effective on the first day of April, 1939."

Sections 1 and 2 of Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, contained a recital of the economic factors giving rise to the need for an unemployment compensation system and declared the purpose of the Act to be "to provide an orderly system of contributions for the care of the justifiably unemployed during times of economic difficulty, thereby preserving and establishing self-respect, reliance, and good citizenship" and to provide for the "compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

Section 13 of the amendatory Act of 1939 declared an emergency and provided

that the Act should take effect from and after its passage.

Repeal of conflicting acts, see art. 5221b—17a.

**Title of Act:**

An Act creating and providing for an Unemployment Compensation System for the State of Texas; imposing a tax on employers of eight (8) or more persons; making certain exemptions; providing for the enforcement and administration of this Act, and prescribing penalties and priorities in aid thereof; authorizing and providing for certain expenditures and disbursements; creating and providing for the Unemployment Compensation Commission; prescribing its powers and duties; providing for a State Employment Service; defining certain terms; providing that the Act shall be severable; providing for the termination of the Act under certain circumstances, and declaring an emergency. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482.]

### Art. 5221b—1a. Payment of benefits

Notwithstanding any of the provisions of this Chapter, wages earned for services with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress, irrespective of when performed, shall not be included for purposes of determining eligibility conditions, including a determination of the benefit amount, for the duration of benefits, or the wages earned during the qualifying period, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on or after July 1, 1939, be payable on the basis of such wages. Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 3a, added Acts 1939, 46th Leg., p. 459, § 1.

Effective May 12, 1939.

Section 2 of amendatory Act of 1939, added art. 5221b—7a; section 3 added arti-

cle 5221b—9a; section 4 declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 5221b—2. Benefit eligibility conditions**

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe.

(b) He has made a claim for benefits in accordance with the provisions of Section 6(a) of this Act.<sup>1</sup>

(c) He is able to work, and is available for work.

(d) He has within his base period earned wages from employment by employers equal to not less than eight (8) times his benefit amount.

(e) Prior to the first payment of any series of benefits based on an initial claim, he has been totally or partially unemployed for a waiting period of one week. No week shall be counted as a waiting period week for the purposes of this subsection:

(1) unless he has registered at an employment office in accordance with Sec. 4(a) of this Act;<sup>2</sup>

(2) unless it is the week immediately preceding or the week immediately following the filing of an initial claim, as the Commission may by regulation prescribe;

(3) if benefits have been paid with respect thereto. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 4, as amended Acts 1937, 45th Leg., p. 121, ch. 67, § 2; Acts 1939, 46th Leg., p. 436, § 2.

<sup>1</sup> Article 5221b—4.

<sup>2</sup> Article 5221b—2.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

**Art. 5221b—3. Disqualification for benefits**

An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last employment voluntarily without good cause. Such disqualification shall be for not less than one (1) nor more than eight (8) benefit periods immediately following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

(b) If the Commission finds that he has been discharged for misconduct connected with his last employment. Such disqualification shall be for not less than one (1) nor more than eight (8) benefit periods immediately following the filing of a valid claim, as determined by the Commission in each case according to the seriousness of the misconduct.

(c) If the Commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than four (4) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

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(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work;

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate business in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended, or similar payments under any Act of Congress,<sup>1</sup> or a State Legislature, or employer pension plan, provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration.

(f) In determining the number of benefit periods during which any individual is entitled to receive benefits in a benefit year, the Commission shall deduct any period of disqualification as provided in subsection (a), (b), and (c) of this Section from the total number of benefit periods during which he would otherwise be entitled to receive benefits except for such disqualification; provided, that in no case shall the number of benefit periods so deducted exceed the number of benefit periods during which the claimant is then eligible to receive benefits except for such disqualification. Acts 1936, 44th Leg., 3rd C. S., p. 1993, c. 482, § 5, as amended Acts 1939, 46th Leg., p. 436, § 3.

<sup>1</sup> 42 U.S.C.A. §§ 401-410.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

**Art. 5221b—4. Claims for benefits; review of decisions; appeals; procedure**

(a) **Filing:** Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service, and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the Commission to each employer without cost to him.

(b) **Initial Determination:** A representative designated by the Commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the date on which benefits shall commence, the benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the Commission, which shall make its determinations with respect thereto in accordance with the procedure described in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 5(d) of this Act,<sup>1</sup> the deputy shall promptly transmit his full finding of fact with respect to that subsection to the Commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under the subsection. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or any such interested party, within ten (10) calendar days after the delivery of such notification, or within twelve (12) calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the Commission, shall be paid only after such determination; provided, that if an appeal tribunal affirms a decision of a deputy, or the Commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) **Appeals:** Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be final decision of the Commission, unless within ten (10) days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (a) of this section.

(d) **Appeal Tribunals:** To hear and decide disputed claims, the Commission, if it is necessary to insure prompt disposal of cases on appeal, shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three (3) members, one of whom shall be a salaried examiner, who shall serve as Chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of labor; each of the latter two members shall serve at the pleasure of the Commission and be paid a fee of not more than Ten (\$10.00) Dollars per day of active service on

such tribunal plus necessary expenses. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The Chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the Chairman of the appeal tribunal is present.

(e) Commission Review: The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The Commission shall promptly notify the interested parties of its findings and decision, and shall send a certified copy of its order to all interested parties.

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees: Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Act.

(h) Appeal to Courts: Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final ten (10) days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the Commission and has been designated and appointed for that purpose by the Attorney General of Texas.

(i) Court Review: Within ten (10) days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in any court of competent jurisdiction in the county of claimant's residence against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant. Such trial shall be de novo. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so serv-

ed as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. Such action shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation Law of this State.<sup>2</sup> An appeal may be taken from the decision of the trial court, in the same manner, as is provided in other civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas. Acts 1936, 44th Leg., 3rd C. S., p. 1993, Ch. 482, § 6, as amended Acts 1939, 46th Leg., p. 436, § 3-A.

<sup>1</sup> Article 5221b—3(d).

<sup>2</sup> Articles 8306 et seq.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

#### Art. 5221b—5. Contributions

(a) Payment: On and after January 1, 1936 contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act,<sup>1</sup> with respect to wages payable for employment occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulation as the Commission may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ.

(b) Rate of Contributions: Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) Nine-tenths of one (9/10 of 1%) per centum with respect to employment during the calendar year 1936;

(2) One and eight-tenths (1,8/10%) per centum with respect to employment during the calendar year 1937;

(3) Two and seven-tenths (2,7/10%) per centum with respect to employment during the calendar years 1938, 1939, and 1940;

(4) With respect to employment after December 31, 1940, the percentage determined pursuant to subsection (c) of this section.

(c) Experience Rating: (1) For each calendar year commencing after December 31, 1940, the contribution rate of each employer who has had three years of compensation experience shall be determined by the fund's maximum liability for benefits to his employees who have received benefits, modified by the state experience as to average duration of benefit payments, as provided below.

(2) When in any benefit year beginning after December 31, 1938, an employee is first paid benefits for total or partial unemployment, his wages during his base year shall be termed the employee's benefit wages, and shall be treated for the purposes of this paragraph as though they had been paid in the calendar year in which such first benefit is paid. Benefit wages shall include only the wages available for wage credits earned from employers in a base period.

(3) The employer's benefit wages for a given calendar year shall be the total of the benefit wages received from him by all of his employees or former employees who received their first benefit payment of a given

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

benefit year in such calendar year; provided, however, that for the year 1938 each employer's benefit wages shall be the average of his benefit wages for the calendar years of 1939 and 1940.

(4) The benefit wage ration of each employer shall be a percentage equal to the total of his benefit wages for the most recent three consecutive completed calendar years divided by his total taxable payroll for the same three years on which contributions have been paid to the Commission prior to January 31 of the calendar year with respect to which his benefit wage ratio is determined.

(5) For any calendar year the total benefits paid from the fund, less all amounts credited to the fund other than employers' contributions collected under this Section, and interest earned on the fund, shall be termed the "amount required from employers". The amount required from employers, divided by the state-wide total of benefit wages of all employers for that calendar year, after adjustment to the nearest multiple of one (1%) percent shall be termed the "state experience factor." The state experience factor shall be determined annually, prior to the due date of the first contribution payment for employment in the succeeding year.

(6) The contribution rate for each employer for the current year, to be applied to his current payroll shall be in accordance with the following table based upon the state experience factor and his benefit wage ratio:

WHEN THE STATE EXPERIENCE FACTOR IS		IF THE EMPLOYER'S BENEFIT WAGE RATIO DOES NOT EXCEED:							
1%	50%	100%	150%	200%	250%	300%	350%		
2	25	50	75	100	125	150	175		
3	17	33	50	66	83	100	117		
4	13	25	38	50	63	75	88		
5	10	20	30	40	50	60	70		
6	8	17	25	34	42	50	58		
7	7	14	21	29	36	43	50		
8	6	13	19	25	31	38	44		
9	6	11	16	22	28	33	39		
10	5	10	15	20	25	30	35		
11	5	9	14	18	23	27	32		
12	4	8	13	17	21	25	29		
13	4	8	12	15	19	23	27		
14	4	7	11	14	18	21	25		
15	3	7	10	13	17	20	23		
16	3	6	9	12	16	19	22		
17	3	6	9	12	15	18	21		
18	3	6	8	11	14	17	19		
19	3	5	8	11	13	16	18		
20	3	5	8	10	13	15	18		
21	2	5	7	10	12	14	17		
22	2	5	7	9	11	14	16		
23	2	4	7	9	11	13	15		
24	2	4	6	8	10	12	15		

THE EMPLOYER'S CONTRIBUTION RATE SHALL BE:

.5%      1.0%      1.5%      2.0%      2.5%      3.0%      3.5%

If the employer's benefit wage ratio exceeds the amount in the last column of the table on the line for current year's state experience factor, his contribution rate shall be four (4%) per cent.

(7) Each employer's rate shall be two and seven-tenths (2,7/10%) per centum, except as otherwise provided in this section. No employer's rate shall be less than two and seven-tenths (2,7/10%) per centum unless and until there shall have been three (3) calendar years throughout which any individual in his employ could have received benefits if eligible. No calendar year shall be treated as a calendar year for the purposes of this subsection unless during such calendar year such employer was liable for the payment of contributions under this section.

(8) For the purposes of this Section, benefits shall be deemed to have been paid at the time the claim therefor shall have been certified by the Commission to the State Comptroller. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 7, as amended Acts 1937, 45th Leg., p. 121, ch. 67, § 3; Acts 1939, 46th Leg., p. 436, § 4.

<sup>1</sup> Articles 5221b—1 to 5221b—22.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

#### Art. 5221b—6. Duration of coverage

(a) Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be subject to this Act during the whole of such calendar year.

(b) (1) An employing unit, not otherwise subject to this Act, which files with the Commission its written election to become an employer subject hereto for not less than two (2) calendar years, shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval.

(2) Any employing unit for which services that do not constitute employment as defined in this Act are performed, may file with the Commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this Act for not less than two (2) calendar years. Upon the written approval of such election by the Commission, such services shall be deemed to constitute employment subject to this Act from and after the date stated in such approval.

(c) An employing unit shall cease to be an employer subject to this Act only as of the 1st day of January of any calendar year, if it files with the Commission, prior to the 31st day of March of such year, a written application for termination of coverage, and the Commission finds that there were no twenty (20) different days, each day being in a different week within the preceding calendar year, within which such employing unit employed eight (8) or more individuals in employment subject to this Act. For the purposes of this sub-section the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 19 (f)<sup>1</sup> shall be treated as a single employing unit.

(d) Any employing unit which is or becomes an employer subject to this Act, and which under the provisions of this subsection ceases to be an employer subject to this Act and subsequent to such time becomes an employer subject to this Act by reason of any of the provisions hereof, shall upon again becoming an employer subject to this Act be considered a new employer without regard to any rights acquired by it during the



time that it had theretofore been an employer. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 8, as amended Acts 1939, 46th Leg., p. 436, § 5.

<sup>1</sup> Article 5221b—17.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

**Art. 5221b—6a. Seasonal industry; definitions; duration of coverage; rules and regulations of Commission**

(1) As used in this Section, the terms "seasonal industry" mean an industry in which, because of the seasonal nature thereof, it is customary to lay off 40% or more of the workers for as many as eight weeks during a regularly recurring period of each year. The Commission shall, after a study of previous employment records and after investigation and hearing, determine, and may thereafter, from time to time, redetermine, the normal seasonal period or periods during which workers are ordinarily employed for the purpose of carrying on seasonal operations in each seasonal industry. Until such determination by the Commission, no industry shall be deemed to be seasonal.

(2) The term "seasonal worker" means an individual who is ordinarily employed in a seasonal industry, except that the term shall not include workers in occupations which, after the Commission has studied the nature thereof and the employment record of workers engaged therein, are found to be occupations in which employment regularly continues throughout substantially all the year.

(3) The Commission shall prescribe fair and reasonable general rules applicable to seasonal workers for determining the period during which benefits shall be payable to them. The Commission may prescribe fair and reasonable general rules with respect to such other matters relating to benefits for seasonal workers as the Commission finds necessary and consistent with the policy and purposes of this Act. Rules prescribed pursuant to this paragraph shall, with respect to such workers, supercede any inconsistent provisions of this Act, but so far as practicable shall secure results reasonably similar to those provided in the analogous provisions of this Act. Acts 1936, 44th Leg., 3rd C.S. p. 1993, ch. 482, § 8-a, as added Acts 1939, 46th Leg., p. 436, § 8-a.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

**Art. 5221b—7. Unemployment compensation fund**

(a) Establishment and Control: There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Fund, which shall be administered by the Commission exclusively for the purposes of this Act. This fund shall consist of (1) all contributions collected under this Act, together with any interest thereon collected pursuant to Section 14 of this Act;<sup>1</sup> (2) all fines and penalties collected pursuant to the provisions of this Act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

(b) Accounts and Deposit: The State Treasurer shall be treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the Commission and the Comptroller shall issue warrants upon it in accordance with such regulations as the Commission

shall prescribe. The Treasurer shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to Section 14 of this Act<sup>1</sup> may be paid from the clearing account upon warrants issued by the Comptroller under the direction of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended,<sup>2</sup> any provisions of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the Unemployment Trust Fund. Moneys in the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The Treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the Commission and in a form prescribed by law or approved by the Attorney General. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals: Moneys shall be requisitioned from this State's account in the Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the Commission. The Commission shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the Treasurer shall deposit such moneys in the benefit account and the Comptroller shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of the Treasurer and the countersignature of a member of the Commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the Unemployment Trust Fund as provided in subsection (b) of this section.

(d) If a warrant has been issued by the Comptroller in payment of benefits as provided under this Act, and if the claimant entitled to receive such warrant has lost or loses or for any reason failed or fails to receive such warrant after such warrant is or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue to claimant a duplicate warrant as provided for in Article 4365, Revised Civil

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Statutes of Texas of 1925, but in no event shall a duplicate warrant be issued after one year from the date of the original warrant.

If after any warrant has been issued by the Comptroller payable to a claimant for benefits under the provisions of this Act, and such warrant shall have been lost or misplaced, or if claimant for any reason fails or refuses to present said warrant for payment within twelve months after the date of issuance of such warrant, such warrant shall be canceled, and thereafter no payment shall be made by the Treasurer on such warrant, and no duplicate warrant in place thereof shall ever be issued.

(e) Management of Funds Upon Discontinuance of Unemployment Trust Fund: The provisions of subsections (a), (b), (c), and (d), to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such Unemployment Trust Fund from which no other State is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the Unemployment Compensation Fund of this State, shall be transferred to the Treasurer of the Unemployment Compensation Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Commission, in accordance with the provisions of this Act; provided, that such moneys shall be invested in the following readily marketable classes of securities; bonds or other interest-bearing obligations of the United States of America; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the Unemployment Compensation Fund only under the direction of the Commission. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 9, as amended Acts 1939, 46th Leg., p. 436, § 6.

<sup>1</sup> Article 5221b—12.

<sup>2</sup> 42 U.S.C.A. § 1104.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

#### Art. 5221b—7a. Transfer of funds

Notwithstanding any requirements of this Chapter, the Commission shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act as amended,<sup>1</sup> to the Railroad Unemployment Insurance Account, established and maintained pursuant to Section 10 of the Railroad Unemployment Insurance Act,<sup>2</sup> an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) January 1, 1940, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in said Unemployment Trust Fund to said Railroad Unemployment Insurance Account an additional amount, hereinafter referred to as the liquidating amount. The Social Security Board shall determine both such amount after con-

sultation with the Commission and the Railroad Retirement Board. The preliminary amount shall consist of that proportion of the balance in the Unemployment Compensation Fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1 (a) of the Railroad Unemployment Insurance Act)<sup>3</sup> and credited to the Unemployment Compensation Fund bears to all contributions theretofore collected under this Act and credited to the Unemployment Compensation Fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1(a) of the Railroad Unemployment Insurance Act) pursuant to the provisions of this Act during the period July 1, 1939, to December 31, 1939, inclusive. Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 9a, added Acts 1939, 46th Leg., p. 459, § 2.

142 U.S.C.A. § 1104.

Effective May 12, 1939.

242 U.S.C.A. § 1104; 45 U.S.C.A. § 360.

Emergency section. See note under article 5221b—1a, ante.

345 U.S.C.A. § 351.

#### Art. 5221b—8. Unemployment Compensation Commission

(a) Organization: There is hereby created a Commission to be known as the Texas Unemployment Compensation Commission. The Commission shall consist of three (3) members, one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally. Each of the three (3) members of the Commission shall be appointed by the Governor immediately after the effective date of this Act or after any vacancy occurs in the membership of the Commission. During his term of membership on the Commission, no member shall engage in any other business, vocation or employment. Each member shall hold office for a term of six (6) years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of enactment of this Act shall expire, as designated by the Governor at the time of appointment, one at the end of two (2) years, one at the end of four (4) years, and one at the end of six (6) years after the date of his appointment.

(b) Chairman: The Chairman of the Texas Unemployment Compensation Commission shall be the impartial member of the Commission, and shall in addition serve as the executive director of all divisions of the Texas Unemployment Compensation Commission.

(c) Divisions: The Commission shall establish two coordinate divisions; the Texas State Employment Service Division pursuant to Section 12 of this Act,<sup>1</sup> and the Unemployment Compensation Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except in so far as the Commission may find that such separation is impracticable.

(d) Salaries: The Chairman of the Texas Unemployment Compensation Commission and executive director shall be paid from the Unemployment Compensation Administration Fund a fixed monthly salary at the rate of Seventy Five Hundred (\$7,500.00) Dollars per year, and each of the other two (2) Commissioners shall from the same fund be paid a fixed monthly salary at the rate of Five Thousand (\$5,000.00) Dollars per year. From and after September 1, 1937, any sums of money paid by the State out of State funds as salaries paid the Commission shall

be fixed in the regular departmental appropriation bill of the State of Texas.

(e) Quorum: Any two (2) Commissioners shall constitute a quorum, provided, however, that whenever the Commission hears any case involving a disputed claim for benefits under the provisions of Section 6 of this Act,<sup>2</sup> the impartial member of the Commission shall act alone in the absence or disqualification of any other member, and in no case shall such a hearing proceed unless the impartial member of the Commission is present. Except as hereinbefore provided, no vacancy shall impair the right of the remaining Commissioners to exercise all of the powers of the Commission.

(f) Employees: No person shall ever be employed by the Unemployment Compensation Commission who is not at the time of his employment a bona fide citizen of the State of Texas or who will not have been a bona fide citizen of the State of Texas for at least five (5) consecutive years immediately next preceding the date of employment. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 10.]

<sup>1</sup> Article 5221b—10.

<sup>2</sup> Article 5221b—4.

#### Art. 5221b—9. Administration

(a) Duties and Powers of Commission: It shall be the duty of the Commission to administer this Act;<sup>1</sup> and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. Not later than the first day of February of each year, the Commission shall submit to the Governor a report covering the administration and operation of this Act during the preceding calendar year and shall make such recommendations for amendments to this Act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules: General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten (10) days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

(c) Publication: The Commission shall cause to be printed for distribution to the public the text of this Act, the Commission's regulations and general rules, its annual reports to the Governor, and any other material the Commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) Personnel: Subject to other provisions of this Act, the Commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The Commission shall not employ or pay any person who is an officer or committee member of any political party organization. The Commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this Act, and may, in its discretion, bond any person handling moneys or signing checks hereunder.

(e) Records and Reports: Each employing unit shall keep true and accurate employment records, containing such information as the Commission may prescribe and which is deemed necessary to the proper administration of this Act. Such records shall be open to inspection and subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this Act. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the Commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the Commission who violates any provision of this section shall be fined not less than Twenty (\$20.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or imprisonment<sup>2</sup> for not longer than ninety (90) days, or both.

(f) Oaths and Witnesses: In the discharge of the duties imposed by this Act, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Act.

(g) Subpoenas: In case of contumacy by, or refusal to obey a subpoena issued to any person, any County or District Court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the Commission, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof: Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

is in his power so to do, in obedience to a subpoena of the Commission, shall be punished by a fine of not less than Two Hundred (\$200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(h) Protection against Self Incrimination: No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission or in obedience to the subpoena of the Commission or any member thereof or any duly authorized representative of the Commission in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(i) State-Federal Cooperation: In the administration of this Act, the Commission shall cooperate to the fullest extent consistent with the provisions of this Act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended;<sup>3</sup> shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act<sup>4</sup> for the purpose of assisting in the administration of this Act.

Upon request therefor, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 11.]

<sup>1</sup> Articles 5221b—1 to 5221b—22.

<sup>3</sup> 42 U.S.C.A. §§ 301—1305.

<sup>2</sup> So in enrolled bill. Probably should read "imprisoned."

<sup>4</sup> 42 U.S.C.A. §§ 501—503.

#### Art. 5221b—9a. Use of records

The Commission may make the State's records relating to the administration of this Act available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such Board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes.

The Commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 11a, added Acts 1939, 46th Leg., p. 459, § 3.

Effective May 12, 1939.

Emergency section. See note under article 5221b—1a, ante.

#### Art. 5221b—10. Employment service

(a) Texas State Employment Service, as provided for under Act of the Forty-fourth Legislature, Regular Session, Chapter 236, page 552,<sup>1</sup> is

hereby transferred to the Commission as a division thereof. The Commission, through such division, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act,<sup>2</sup> and for purposes of performing such duties, as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat. 113; U.S.C., Title 29, Section 49 (c) ) as amended.<sup>3</sup> It shall be the duty of the Commission to cooperate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this State in conformity with Section 4 of said Act,<sup>4</sup> and this State will observe and comply with the requirements thereof. The Texas Unemployment Compensation Commission is hereby designated and constituted the agency of this State for the purposes of said Act. The Director, other officers and employees of the Texas State Employment Service shall be appointed by the Commission in accordance with regulations prescribed by the Director of the United States Employment Service.

(b) Financing: All monies received by this State under the said Act of Congress, as amended, shall be paid into the special "Employment Service Account" in the Unemployment Compensation Administration Fund, and said monies are hereby made available to the Texas Unemployment Compensation Commission to be expended as provided by this Section and by said Act of Congress, and any unexpended balance of funds appropriated or allocated either by the State of Texas or the Federal Government to the Texas State Employment Service as a division of the Bureau of Labor Statistics, is hereby, upon the passage of this Act, transferred to the special "Employment Service Account" in the Unemployment Compensation Administration Fund. For the purpose of establishing and maintaining free public employment offices, the Commission is authorized to enter into agreements with any political subdivision of this State or with any private, and/or non-profit organization, and as a part of any such agreement the Commission may accept monies, services, or quarters as a contribution to the special "Employment Service Account."

(c) Invalidity of Transfer: In the event that this Act, or any section thereof, in so far as the same shall affect the Texas State Employment Service, shall be held or declared unconstitutional or invalid, then in that event Chapter 236, page 552, Acts of the Regular Session of the Forty-fourth Legislature establishing the Texas State Employment Service shall be and remain in full force and effect as it was prior to the passage of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 12, as amended Acts 1937, 45th Leg., p. 121, ch. 67, § 4.]

<sup>1</sup> Article 5221a-2.

<sup>2</sup> Articles 5221b-1 to 5221b-22.

<sup>3</sup> 29 U.S.C.A. §§ 49 to 49L.

<sup>4</sup> 29 U.S.C.A. § 49c.

Amendment of 1937, effective March 24, 1937.

#### Art. 5221b—11. Unemployment Compensation Administration Fund

(a) Special Fund: There is hereby created in the State Treasury a special fund to be known as the Unemployment Compensation Administration Fund. All moneys deposited or paid into this Fund are hereby appropriated and made available to the Commission. All moneys in this



Fund shall be expended solely for the purpose of defraying the cost of the administration of this Act, and for no other purpose whatsoever. The Fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board and the United States Employment Service, all moneys collected by the Commission as costs or fees charged by the Commission for furnishing photostatic or certified copies of records of the Commission, or fees charged by the Commission for making audits pursuant to the authority granted in this Act, or from any other source, for such purpose, and shall be administered separate and apart from all public moneys or funds of the State. All moneys in this Fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Any balances in this Fund shall not lapse at any time, but shall be continuously available to the Commission for expenditure consistent with this Act. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the Unemployment Compensation Administration Fund in an amount to be fixed by the Commission and in a form prescribed by law or approved by the Attorney General. The premiums for such bond and the premiums for the bond given by the Treasurer of the Unemployment Compensation Fund under Section 9 of this Act,<sup>1</sup> shall be paid from the moneys in the Unemployment Compensation Administration Fund.

(b) The Commission is authorized to furnish to any person entitled thereto upon application therefor photostatic or certified copies of any records in its possession, the publication of which is not prohibited by this Act, and the Commission shall charge therefor a fee at the rate of fifty cents per page for each and every photostatic or certified copy of any record or document so furnished.

(c) Employment Service Accounts: A Special "Employment Service Account" shall be maintained as a part of the Unemployment Compensation Administration Fund for the purpose of maintaining the public employment offices established pursuant to Section 12 of this Act and for the purpose of cooperating with the United States Employment Service. There shall be paid into such account the moneys designated in Section 12(b) of this Act,<sup>2</sup> and such moneys as are apportioned for the purposes of this account from any moneys received by this State under Title III of the Social Securities Act, as amended.<sup>3</sup> Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 13, as amended Acts 1937, 45th Leg., p. 121, ch. 67, § 5; Acts 1939, 46th Leg., p. 436, § 7.

<sup>1</sup> Article 5221b—7.

<sup>2</sup> Article 5221b—10.

<sup>3</sup> 42 U.S.C.A. §§ 501-503.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

#### Art. 5221b—12. Collection of contributions

(a) Interest and penalties on past due contributions: If any employer subject to the provisions of this Act shall fail to pay contributions due under this Act on the date on which they are due and payable as prescribed by the Commission, such employer shall forfeit to the State of Texas a penalty of one (1%) per centum thereof, and after the expiration of one (1) month such employer shall forfeit an additional penalty of one (1%) per centum thereof, for each month or fraction thereof, until such contributions and penalties shall have been paid in full.

(b) Collections: If, after due notice, any employer defaults in any payment of contributions, penalties or interest thereon, the amount due

shall be collected by civil action in the name of the State and the Attorney General, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions, penalties or interest thereon from an employer shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Act and cases arising under the Workmen's Compensation Law of this State.<sup>1</sup>

(c) If any employer shall (a) fail to keep any of the records required to be kept by the provisions of this Act, or (b) shall fail to make any reports to the Commission, required herein to be made, or required by regulations of the Commission to be made, or (c) make a false or incomplete report to the Commission, or (d) fail or refuse to abide by the provisions hereof, or the Rules and Regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty the sum of not less than Twenty-five (\$25.00) Dollars, nor more than Five Hundred (\$500.00) Dollars. Each day's violation shall constitute a separate offense and incur another penalty, which if not paid may be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas.

(d) If any employer fails or refuses to pay any contributions, penalties or interest within the time and manner provided by this Act, or by the rules or regulations adopted by the Commission hereunder, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceeding, any report filed in the offices of the Texas Unemployment Compensation Commission by such employer or his agents or representatives, or a certified copy thereof certified to by the Chairman or any member of said Commission, or the Chief Accountant of said Commission, showing the amount of wages paid by such employer or his agents or representatives, with respect to which contributions, penalties or interest have not been paid, or any audit made by the Texas Unemployment Compensation Commission or its representatives from the books of such employer when signed and sworn to by such representative as being made from the records of said employer, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(e) In the event the Attorney General shall file suit or a claim for contributions, penalties or interest, as provided in this Act, and attach or file as an exhibit any report or audit of such employer, and an affidavit made by any member of the Texas Unemployment Compensation Commission, or any representative of the Commission, that the contributions, penalties or interest shown to be due by said report or audit are past due and unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as provided by Article 3736, Revised Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said Audit or report shall be taken as prima facie evidence thereof, and the proceedings of said article are hereby made applicable to suits to collect contributions, penalties or interest hereunder.

(f) All contributions, penalties, and interest due by any employer to the fund shall become a lien upon all the property both real and personal of any employer, used by such employer in performing or aiding in the performance of the service which his employees have contracted to

perform on his behalf. Such lien shall attach at the time any contributions or penalties or interest become delinquent as provided herein.

(g) If any employer shall fail to remit proper contributions when due, or if any employer shall fail to make such reports to the Commission as are required by this Act, or, as are required by the Regulations adopted by the Commission pursuant to authority granted in this Act, the Commission may employ auditors or other persons to ascertain the correct amount of contributions due and to prepare the correct reports due, and if such contributions have not been properly remitted, or, if such reports have not been properly made, the employer shall pay the reasonable expenses incurred in such investigation which shall be paid as additional penalty, and such additional penalty may be collected by the Commission in the manner prescribed in this Section, provided that nothing herein shall prevent the Commission from using other funds available to it for the purpose of making audits and preparing or assisting in preparing reports of employers when the Commission determines that such action is necessary.

(h) Whenever any suit shall be instituted on behalf of the Commission, or at the request of the Commission under this Section or under Section 17 of the Act,<sup>2</sup> the costs adjudged against the State or the Commission shall be paid by the Commission out of the administrative fund herein provided for. All such costs as are chargeable against the Commission shall be paid by the Commission to the officers of the courts of Texas at the time that the same become due under the provisions of the General Laws of this State.

(i) Priorities under legal dissolutions or distributions: In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be entitled to the same priority as is now accorded by the General Laws of the State of Texas to other tax claims.

(j) Where any employing unit has made a payment to the Commission of contributions alleged to be due, and it is later determined that such contributions were not due, in whole or in part, the employing unit making such payment may make application to the Commission for an adjustment thereof in connection with contribution payments then due, or, for a refund thereof because such adjustment cannot be made, and if the Commission shall determine that such contributions or penalty, or any portion thereof were erroneously collected, the Commission shall allow such employing unit to make an adjustment thereof without interest in connection with contribution payments then due by such employing unit, or if such adjustment cannot be made, the Commission shall refund said amount without interest from the Fund, provided that no application for adjustment or refund shall ever be considered by the Commission unless the same shall have been filed within four (4) years from the date on which such contributions or penalties would have become due, had such contributions been legally collectible by the Commission from such employing unit. For like cause, and within the same period, adjustment or refund may be so made on the Commission's own initiative.

(k) Whenever it shall appear that any individual or employing unit is violating or threatening to violate any of the provisions of this Act, or of any rule, regulation or order of the Commission promulgated under this Act, relative to the collection of contributions, penalties or interest, or the filing of reports relative to employment, the Commission, through the Attorney General, shall bring suit, in the name of the State of Texas

against such employing unit or individual in any court of competent jurisdiction in the county of the residence of the defendant, or if there be more than one defendant in the county of the residence of any of them, or in the county in which such violation is alleged to have occurred, to restrain such person or employing unit from violating such statute, or such rules, regulation or order of the Commission, or any part thereof, and in such suit the Commission in the name of the State of Texas may obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant.

The violation by any person or employing unit of any injunction granted under the provisions of this Act shall be sufficient grounds for the appointment by the court, either upon its own motion or that of the Commission in the name of the State of Texas, of a receiver to take charge of such properties of such person or employing unit and to exercise such powers as in the judgment of the court shall be necessary in order to bring about compliance with such injunction; provided, however, that no such receiver shall be appointed except after notice and hearing. The power to appoint a receiver as herein provided shall be in addition to and cumulative of the power to punish for contempt. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 14, as amended Acts 1939, 46th Leg., p. 436, § 8.

1 Articles 3306 et seq.

2 Article 5221b—15.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

#### Art. 5221b—13. Protection of rights and benefits

(a) Waiver of Rights Void: No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act<sup>1</sup> shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violated<sup>2</sup> any provision of this subsection shall, for each offense, be fined not less than One Hundred (\$100.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or be imprisoned for not more than six (6) months, or both.

(b) Limitation of Fees: No individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the Commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the Commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Commission. Any person who violates any provision of this subsection shall for each such offense, be fined not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, or imprisoned for not more than six (6) months, or both.

(c) No Assignment of Benefits; Exemptions: No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any

individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 15.]

<sup>1</sup> Articles 5221b—1 to 5221b—22.

<sup>2</sup> So in enrolled bill. Probably should read "violates."

#### Art. 5221b—14. Penalties

(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this Act, either for himself or for any other person, shall be punished by a fine of not less than Twenty (\$20.00) Dollars, nor more than Fifty (\$50.00) Dollars, or by imprisonment for not longer than thirty (30) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than Twenty (\$20.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provision of this Act or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than Twenty (\$20.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the Commission for the Unemployment Compensation Fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Section 14(b) of this Act<sup>1</sup> for the collection of past due contributions.

(e) Any person who by wilful nondisclosure or misrepresentation by him, or by another for him, of a material fact, has received any sum as benefits under this Act while any conditions for receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, forfeits his rights to benefits for the benefit year during which such nondisclosure or misrepresentation occurred. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 16, as amended. Acts 1939, 46th Leg., p. 436, § 9.

<sup>1</sup> Article 5221b—12.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

#### Art. 5221b—15. Representation in court

(a) In any civil action to enforce the provisions of this Act<sup>1</sup> the Commission and the State shall be represented by an Assistant Attorney General who shall be appointed by the Attorney General and designated to perform such legal duties as may be required of him by the Commission, and who shall institute in the name of the State and in the name of the Attorney General any civil action requested of him by the Commission. Such Assistant Attorney General shall be paid by the Unemployment Compensation Commission for the services performed by such Assistant Attorney General solely for the Commission. Such Assistant Attorney General may be assisted by any other qualified attorneys who are regularly employed by the Commission.

(b) All criminal actions for violations of any provision of this Act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the Attorney General of the State; or, at his request and under his direction, by the Prosecuting Attorney of any county in which the employer has a place of business or the violator resides. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 17.]

<sup>1</sup> Articles 5221b—1 to 5221b—22.

#### Art. 5221b—15a. Reciprocal arrangements

The Commission is hereby authorized to enter into arrangements with the appropriate agencies of other States or the Federal Government whereby individuals performing services in this and other States for a single employing unit under circumstances not specifically provided for in Section 19 (g) of this Act,<sup>1</sup> or under similar provisions in the unemployment compensation laws of such other States, shall be deemed to be engaged in employment performed entirely within this State or within one of such other States and whereby potential rights to benefits accumulated under the unemployment compensation laws of several States or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the Fund. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 17-A, as added Acts 1937, 45th Leg., p. 121, ch. 67, § 6.]

<sup>1</sup> Article 5221b-17(g).

Amendment of 1937, effective March 24, 1937.

#### Art. 5221b—16. Nonliability of state

Benefits shall be deemed to be due and payable under this Act<sup>1</sup> only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the Unemployment Compensation Fund, and

neither the State nor the Commission shall be liable for any amount in excess of such sums. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 18.]

<sup>1</sup>Articles 5221b—1 to 5221b—22.

#### Art. 5221b—17. Definitions

As used in this Act, unless the context clearly requires otherwise:

(a) (1) "Base period" means the first four (4) out of the last five (5) completed calendar quarters immediately preceding the first (1st) day of an individual's benefit year.

(2) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the Commission may by regulation prescribe.

(b) (1) "Benefits" means the money payments payable to an individual, as provided in this Act, with respect to his unemployment.

(2) "Benefit year", with respect to any individual, means the fifty-two-consecutive-week period beginning with the day on which the first valid claim for benefits is filed, and thereafter the fifty-two-consecutive-week period beginning with the day on which his next valid claim for benefits is filed after the termination of his last preceding benefit year.

(c) "Commission" means the Unemployment Compensation Commission established by this Act.

(d) "Contributions" means the money payment to the State Unemployment Compensation Fund required by this Act.

(e) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all purposes of this Act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(f) "Employer" means

(1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment eight (8) or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this Act) and which, if sub-

sequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interest, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3), or (4), has not, under Section 8,<sup>1</sup> ceased to be an employer subject to this Act;

(6) For the effective period of its election pursuant to Section 8(b)<sup>1</sup> any other employing unit which has elected to become fully subject to this Act.

(g) (1) "Employment" subject to the other provisions of this subsection, means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied, provided that any services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the Commission that such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this State if:

(A) the service is localized in this State; or

(B) the service is not localized in any State but some of the service is performed in this State and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed but the individual's residence is in this State.

(3) Service not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State, shall be deemed to be employment subject to this Act if the individual performing such services is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Act.

(4) Service shall be deemed to be localized within a State, if:—

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) The term "employment" shall not include:

(A) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;

(B) Service with respect to which unemployment compensation is payable under an Unemployment Compensation System established by an Act of Congress; provided, that the Commission is hereby authorized to



enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 11(b) of this Act<sup>2</sup> for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act:

(C) Agricultural labor:

(D) Domestic service in a private home:

(E) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States:

(F) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother:

(G) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(h) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State controlled system of public employment offices.

(i) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions required and from which all benefits provided under this Act shall be paid.

(j) "Partial Unemployment": An individual shall be deemed "partially unemployed" in any benefit period of less than full-time work if his wages payable for such benefit period fail to equal Four (\$4.00) Dollars more than the benefit amount he would be entitled to receive if totally unemployed and eligible.

(k) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(l) "Total Unemployment": An individual shall be deemed "totally unemployed" in any benefit period during which he performs no services and with respect to which no wages are payable to him. An individual's benefit period of total unemployment shall be deemed to commence only after his registration pursuant to Section 4(a) of this Act. As used in this Subsection (l) and Subsection (j) the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of Six (\$6.00) Dollars in any one benefit period, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than Six (\$6.00) Dollars in any one benefit period is payable.

(m) "Unemployment Compensation Administration Fund" means the Unemployment Compensation Administration Fund established by this Act, from which administrative expenses under this Act shall be paid.

(n) "Valid Claim" means a claim for benefits by an individual who has earned qualifying wages as provided in Section 4(d) of this Act.<sup>3</sup>

(o) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages payable by his employing unit. The reasonable cash value of remuneration payable in

any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commission.

(p) "Week" means such period of seven (7) consecutive calendar days as the Commission may prescribe.

(q) "Benefit Amount": An individual's "benefit amount" means the amount of benefits he would be entitled to receive for one benefit period of total unemployment.

(r) "Benefit Period": An individual's "benefit period" means such period of fourteen (14) consecutive calendar days as the Commission may by regulation prescribe. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 19, as amended Acts 1937, 45th Leg., p. 121, ch. 67, § 7; Acts 1939, 46th Leg., p. 436, § 10.

1 Article 5221b—6.

2 Article 5221b—9.

3 Article 5221b—2.

Effective April 1, 1939.

Repeal of conflicting acts, see art. 5221b-17a.

#### Art. 5221b—17a. Repeal; saving clause

The provisions of this Act shall repeal all parts of Chapter 482, General Laws of the Forty-fourth Legislature, Third Called Session, as amended by Chapter 67, General Laws of the Forty-fifth Legislature, Regular Session, in conflict herewith,<sup>1</sup> and all laws or parts of laws in conflict herewith, but shall in no way be construed as forfeiting or waiving rights to collect contributions, interest, or penalties that have accrued under said Chapter, nor the right of prosecution for violating any provision thereof; provided, that any individual becoming unemployed and otherwise eligible during a benefit year established subsequent to April 1, 1938, and prior to the effective date of this Act, shall be paid during such benefit year only those benefits established by his most recent determination applicable to such benefit year and prior to the effective date of this Act, except that the Commission may determine the method of making such payments in accordance with the other provisions of this Act. Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 19-b, as added Acts 1939, 46th Leg., p. 436, § 12.

<sup>1</sup> Articles 5221b—1 to 5221b—22.

Effective April 1, 1939.

#### Art. 5221b—18. Political activities

No department included in this Act<sup>1</sup> shall use any of the means or funds appropriated to such department, either directly or indirectly, for the purpose of telephoning, telegraphing or sending out literature, propaganda, letters or bulletins, or any other matter, printed or written, that will influence or tend to influence, in any way, the election of any candidate for office or the passage or defeat of any law or appropriation affecting any department included in this bill; and provided, further, that no stenographer or other employee whose salary is paid from funds provided under this Act, may be used or employed in any manner in the preparation or mailing out, or in any way handling such literature, propaganda, letters or bulletins, or any other matter, printed or written, that will influence, or tend to influence, in any way the election of any candidate for office or the passage or defeat of any law or appropriation affecting any department included in this Act, and no such work shall be done or performed in any of the offices or rooms of the Capitol or any other State building.

It is hereby declared unlawful for any person employed in any capacity in any of the departments to engage in or take part in any political campaign in relation to matters directly affecting the particular department in which the particular employee is employed, and/or concerning the election or re-election of any candidate for the head of the particular department by which such employee is employed; by "engaging in a political campaign" or "taking part in a political campaign" is meant and shall include distributing circulars, hand bills, posting pictures, handing out cards, making speeches, thereby soliciting or opposing the election of any candidate for office as the head of such department where-by the offending employee is employed.

It is further declared unlawful for any employee of this department to go outside of the county of the residence of such employee and in any manner campaign for or against the election and/or re-election of any candidate for public office other than such department head of the department in which such employee is employed.

Any such employee, engaging in such inhibited and unlawful conduct, shall be subject to removal from his position and restraint from re-employment in such department or any other department of government or subdivision thereof, for a period of five (5) years by a judgment in the District Court of the County wherein such unlawful activity occurred. Any five (5) or more qualified voters, residents of such county, shall have the authority to institute a suit in a District Court of such County, praying for the removal of such employee from such department, citing such employee and the head of the department, and upon final hearing the allegations of the petition being sustained, the judgment shall be to discharge the employee and restraining the head of the department from re-employing such employee for a period of one (1) year from the date of the judgment.

It is hereby further declared unlawful for any person authorized to use a State owned automobile, in connection with any business of the State, to use such automobile in connection with any campaign in which such department is directly interested, or in behalf of the campaign for re-election of the head of any department, and/or in any other manner, time or place than when such automobile is being used in the interest of and for the purpose of carrying out departmental State business. Any person violating this section shall, upon final conviction, be subject to a fine of not less than Fifty (\$50.00) Dollars, nor more than Two Hundred (\$200.00) Dollars. In the event such use of such automobile is being made with the knowledge of the head of any department, having charge of such automobile, then such department head shall also be liable to punishment in a fine of Two Hundred (\$200.00) Dollars. Any court of competent jurisdiction in the county where this law is violated shall have jurisdiction to try such cause.

It is hereby made the duty of every department head to furnish every employee of his department a copy of the law set out in the preceding three (3) paragraphs, and to take the receipt of such employee therefor. These receipts shall at all times be kept accessible for public inspection and failure of any department head to comply with this mandate, shall constitute malfeasance in office, and upon judgment so adjudicating such department head shall be removed from office. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 20.]

<sup>1</sup> Articles 5221b—1 to 5221b—22.

#### Art. 5221b—19. Repeal or amendment

Saving Clause: The Legislature reserves the right to amend or repeal all or any part of this Act<sup>1</sup> at any time; and there shall be no

vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this Act at any time. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 21.]

<sup>1</sup>Articles 5221b—1 to 5221b—22.

#### Art. 5221b—20. Partial invalidity; separability of provisions

(a) If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act,<sup>1</sup> or the application thereof to any person or circumstance, is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

(b) In the event that the provisions of this Act which impose a compulsory contribution be declared invalid or void for any reason, the remainder of the Act shall nevertheless remain in full force and effect; and it is declared to be the intention of the Legislature that the remainder of the Act would have been enacted without the provisions imposing contributions. It is further enacted that in the event the provisions of this Act which impose contributions, are held invalid or void, all payments which have been voluntarily made under the provisions of the Act shall be and remain the property of the fund to which they are deposited; and that employers shall have the right to continue to make voluntary contributions for unemployment insurance under this Act.

(c) In the event it shall be determined and held by the courts that the provisions of this State Act imposing compulsory contributions is invalid and void, it shall be the duty of the Commission to make such refunds to individual contributors as are entitled to the same. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 22.]

<sup>1</sup>Articles 5221b—1 to 5221b—22.

#### Art. 5221b—21. Powers of Commission

General Provisions: In all cases where the Commission is given authority to make investigations, to assemble information and to require the submission of documentary or oral testimony it is the intention of the Legislature to grant to the commission only such powers as are necessary for the Commission to exercise in order that they may properly administer this Act.<sup>1</sup> [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 23.]

<sup>1</sup>Articles 5221b—1 to 5221b—22.

#### Art. 5221b—22. Termination of act

Provisions for Termination of Act and Return of Contribution: In the event the Supreme Court of the United States hold the Federal Social Security Act approved by the President August 14, 1935,<sup>1</sup> unconstitutional or inoperative for any reason whatsoever, then in that event the powers, duties and levies herein provided for, shall have no further force or effect and the Commission shall cease to function and all payments of levies and taxes made hereunder and then remaining unexpended shall be upon proper proof returned ratably to those making such payments, and it shall be the duty of the Unemployment Compensation Commission to perform this Act,<sup>2</sup> and the Unemployment Compensation Commission shall remain in performance of this duty only until such Act has been performed. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 24.]

<sup>1</sup>42 U.S.C.A. §§ 301-1305.

<sup>2</sup>Articles 5221b—1 to 5221b—22.

Section 25 of Act 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, declared an emergency

and provided that the Act should take effect and be in force from and after its passage.

## Art. 5221b—23. Expired

This article, derived from Acts 1937, 45th Leg., p. 550, ch. 271, effective May 5, 1937, in view of section 4 providing that the Act should be in force and effect for a period of

two years from and after the date of its enactment, is now expired. It related to relief investigators in counties of 48,900 to 48,975 and 10,370 to 10,380.

## CHAPTER FIFTEEN—INSPECTION OF STEAM BOILERS [New].

Art.

5221c. Definitions.

## Art. 5221c. Definitions

Section 1. The following terms as used in this Act shall be construed as follows:

"Commissioner" as used herein shall mean the Commissioner of the Bureau of Labor Statistics of the State of Texas;

"Inspector" as used herein shall mean the inspector of steam boilers appointed under the provisions of this Act;

"Deputy" as used herein shall mean any deputy inspector of boilers appointed under the provisions of this Act;

"Boiler" as used herein shall mean any vessel used for generating steam for power or heating purposes;

"Owner or user" as used herein shall mean any person, firm or corporation owning or operating, or in charge of or in control of any boiler as herein defined;

"Safety device" as used herein shall mean any appurtenance attached to any boiler for the purpose of diminishing the danger of accidents;

"Code of Rules" as used herein shall mean the standard code of rules promulgated and adopted by the Commissioner under the provisions of this Act.

**Registration of boilers; certificate of operation; injunction against operation of unsafe boiler**

Sec. 2. No steam boiler, unless otherwise specifically exempted in this Act, shall be operated within the State of Texas unless such boiler has been registered with the Bureau of Labor Statistics and there shall have been issued a Certificate of Operation for such boiler, as hereinafter provided for, and such Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner; such Certificate of Operation shall be placed under glass in a conspicuous place on or near the boiler for which it is issued; and no prosecution shall be maintained where the issuance of or the renewal for such Certificate of Operation shall have been requested and shall remain unacted upon; provided, however, if the operation of such boiler without such Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner or the inspector of boilers or any deputy inspector, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of any inspector or deputy inspector that

its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

#### Exemptions from act

Section 3. The following boilers are exempt from the provisions of this Act:

(1) Boilers under Federal control and stationary boilers at round houses, pumping stations and depots of railway companies under the supervision or inspection of the Superintendent of Motive Power of such railway companies;

(2) Boilers on which the pressure does not exceed fifteen (15) pounds per square inch;

(3) Automobile boilers and boilers on road motor vehicles;

(4) Boilers used exclusively for agriculture purposes;

(5) Boilers for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families;

(6) Boilers used for cotton gins. As amended Acts 1939, 46th Leg., p. 433, § 1.

Effective 90 days after June 21, 1939,  
date of adjournment.

#### Inspections; ordering repairs to unsafe boiler; hearing; temporary certificate

Sec. 4. The Commissioner shall cause to be inspected internally and externally not less frequently than once each twelve (12) months each stationary steam boiler subject to the provisions of this Act. Each portable steam boiler subject to the provisions of this Act shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each twelve (12) months. If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than one year from the date of such inspection. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the boiler inspector or any deputy may issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the owner or user, making the request, shall have opportunity to appear and show cause why he should not comply with said preliminary order. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as he deems proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The inspector in his discretion may issue a temporary Certificate of Operation for not to exceed thirty (30) days, pending the making of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. "Certificate of Operation" used in this Section shall mean the "Certificate of Operation" referred to in Section 2 of this Act.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Insurance companies to file reports of inspections; boilers inspected by insurance companies exempt from other inspections; certificate of operation**

Section 5. Every insurance company insuring boilers in this State shall, within thirty (30) days after inspecting any steam boiler, file a duplicate report of such inspection with the Commissioner showing the date of such inspection together with the name of the person making such inspection, and such report shall show fully the condition and location of such boiler at the time such inspection was made. Such report shall also state when the policy of insurance was issued by the insurance company on said boiler and the date of expiration of such policy of insurance.

The owner or user of every boiler inspected by an inspector for an insurance company authorized to do business in this State on which such insurance company has issued a policy of insurance after inspection thereof, shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any insured boiler at any reasonable time when, in the opinion of the Commissioner, such insured boiler may be in an unsafe condition, provided the Commissioner shall contact the insurance company carrying insurance on said boiler and that the inspector for the insurance company carrying such insurance and the inspector or deputy inspector shall jointly and together inspect the boiler, within twenty (20) days, for which inspection no additional charge shall be made as set forth in Section 12 of this Act. The Commissioner is authorized and has authority to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act, and the owner or user of an insured boiler shall pay the sum of One Dollar (\$1) for each Certificate of Operation issued, and the owner or user of a State inspected boiler shall pay a like sum of One Dollar (\$1) for each Certificate of Operation issued, which said fee shall be and is absorbed by the internal and external inspection fee authorized in Section 12 of this Act. Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, within twenty (20) days after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective. As amended Acts 1939, 46th Leg., p. 433, § 2.

Effective 90 days after June 21, 1939 date of adjournment.

**Commissioner to promulgate rules and regulations; exchange of information**

Sec. 6. The Commissioner is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, installation, use, maintenance and operation of steam boilers and appurtenances thereof; including the boiler room; and to require such devices and safeguards and other reasonable means and methods to insure safe operation of steam boilers, including the registration thereof with the Bureau of Labor Statistics.

The Commissioner may exchange information and experience data with the department or other administrative authorities of States having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Before any rule, regulation or order is promulgated, adopted, enforced, amended, modified or repealed by the Commissioner a public hearing shall

be held by him, and not less than ten (10) days before such hearing notice thereof shall be published in at least three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner. After the adoption of rules, regulations and orders by the Commissioner, a complete copy of same shall be published in at least three (3) newspapers, as in the notice of the hearing prior to their adoption, on two (2) different days not more than ten (10) days apart, and within thirty (30) days after the adoption of such rules, regulations and orders; provided that in lieu of publishing in newspapers the rules, regulations and orders by the Commissioner, as stated above, the Commissioner may publish and circulate said rules, regulations and orders or the repeal, modification or amendment of any such rule, regulation or order in such form or manner as he may determine; and such rules, regulations and orders shall become effective within ten (10) days after date of notice of adoption thereof or final publication, or at such later time as the Commissioner may, in the rules, regulations and orders, determine. The Commissioner is hereby authorized and empowered, in case of extreme emergency, to promulgate and enforce temporary rules, regulations and orders as he may deem necessary, without publishing the same as hereinabove directed; provided, however, that when such temporary rules, regulations or orders are adopted the same shall not be effective for a period of more than twenty (20) days and no criminal prosecution, as hereinafter provided, shall be had until the provisions of Section 16 of this Act have been complied with.

**Party aggrieved by rule or regulation; procedure; hearing; modification of rules**

Sec. 7. When any interested person shall deem himself aggrieved by any fundamental rule, regulation or order promulgated by the Commissioner, he shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same upon his own motion; upon failure or refusal of the Commissioner, within ten (10) days, to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

**Inspector, appointment and qualifications; deputy inspectors**

Sec. 8. Within thirty (30) days after the passage of this Act the Commissioner shall appoint a suitable person to be inspector of steam boilers for the State of Texas. Said inspector of steam boilers shall be a resident citizen of Texas for at least five (5) years next preceding to the time of his appointment and shall have had, at the time of such appointment, not less than five (5) years practical experience with steam boilers as a steam engineer, boilermaker or boiler inspector and by examination enable him to judge the safety of boilers for use, and who is neither directly nor indirectly interested in the manufacture, ownership or agency of steam boilers or their appurtenances. It shall be the duty of the Commissioner to appoint one (1) or more deputy inspectors as needed with like qualifications of the inspector of steam boilers, and such clerical assistants as may be necessary to carry out the provisions of this Act.

**Salaries and expenses**

Sec. 9. The salary of the inspector of steam boilers shall not exceed Three Thousand Dollars (\$3,000) per annum and the salary of each deputy



inspector shall not exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and in addition thereto all inspectors shall be allowed their actual expenses incurred in the performance of their official duties, and for such equipment as may be deemed necessary by the Commissioner. All expenses incident to carrying out the provisions of this Act shall be paid out of the funds in the State Treasury to the credit of the "State Boiler Inspection Fund" on vouchers or warrants issued and signed by the Commissioner and the Comptroller of Public Accounts. The Commissioner may incur such expense for clerical assistants and office supplies as may be necessary, not exceeding Seven Thousand, Five Hundred Dollars (\$7,500) annually, said sums to be paid by the State Treasurer on warrants drawn by the Comptroller of Public Accounts.

**Persons authorized to inspect; Commission from Commissioner showing qualifications; power of commissioner**

Sec. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the inspector of boilers or any deputy inspector, or by any qualified boiler inspector employed by any county, or city and county, or city, or any insurance company, provided that such persons making inspections (other than the inspector of boilers or deputy inspectors regularly employed by the Commissioner) shall first obtain from the Commissioner a commission as inspector showing his qualifications to make such inspections. The Commissioner is vested with full power and authority to determine the qualifications of any applicant or other person seeking a commission as inspector, by examination. At the discretion of the Commissioner he may accept, after proper investigation by him, the commission issued to an inspector by any other state having an examination equal to that of the State of Texas. The Commissioner may rescind at any time, upon good cause being shown therefor, any commission as inspector issued by him to any person, and he may at any time, upon good cause being shown therefor and after notice and opportunity for hearing thereon, revoke any Certificate of Operation issued for any steam boiler within this State.

**Reports of inspections**

Sec. 11. Every inspector receiving a commission as inspector shall forward to the Commissioner on forms furnished the inspector by the Commissioner, within thirty (30) days after an inspection is made, a report of such inspection, in default of which the commission as inspector may be cancelled by the Commissioner.

**Fees for inspections**

Section 12. The Commissioner shall fix and collect fees for the inspection of steam boilers covered by this Act which exceed thirty (30) inches in diameter, Two Dollars and Fifty Cents (\$2.50) for each external inspection, and not to exceed Seven Dollars and Fifty Cents (\$7.50) for each internal inspection in each twelve (12) months period; and for boilers exceeding twenty-four (24) inches in diameter and not exceeding thirty (30) inches in diameter, Five Dollars (\$5) for each complete inspection in each twelve (12) months period; and boilers not exceeding twenty-four (24) inches in diameter, Two Dollars and Fifty Cents (\$2.50) for each complete inspection in each twelve (12) months period. Provided that, when a boiler is found unfit for further use no Certificate of Inspection shall be issued and the use of such condemned boiler may be prohibited. Provided further that the Commissioner or any of his employees shall not have authority to prescribe the make, brand or kind of boilers to buy or purchase. And provided

that when any inspector or employee of the Commissioner tears down a boiler in a cleaning and pressing establishment, said inspector or employee shall assist the owner to repair and assemble said boiler as it was before it was dismantled, and if he fails to assist said owner said fee shall not be paid. Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected. No fees shall be charged the owner or user by the Commissioner when the inspection herein provided for has been made by an inspector holding a commission as inspector from said Commissioner if the holder of such commission as inspector is employed by any county, or city and county, or city, or insurance company, except the charge fixed for Certificate of Operation in Section 5 hereof. All fees collected by the Commissioner under this Act shall be paid into the State Treasury to the credit of the "State Boiler Inspection Fund" together with a detailed report of same, and said monies so deposited in said special fund are hereby appropriated for the purpose of paying the expenses of the administration of this Act. As amended Acts 1939, 46th Leg., p. 433, § 3.

Effective 90 days after June 21, 1939, date of adjournment.

**Penalties for violations by persons in charge of steam boilers**

Sec. 13. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any steam boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

**Violations by operators of factories, mills, mines, stores, or business houses, misdemeanors**

Sec. 14. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any mineral estate in land, or any other place where a steam boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Bureau of Labor Statistics to enter the same and remain thereon or therein for such time as is reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter him from carrying out the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed One Hundred Dollars (\$100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

**Notice of violation of act or rule or regulation prerequisite to criminal prosecution**

Sec. 15. Whenever there shall have been adopted, after notice and hearing as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Com-

missioner shall have given notice of such rule, regulation or order by publishing a complete copy of same in three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner, once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such rule, regulation, and order shall be effective and enforceable in any criminal action brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provision or any amendment or modification of any rule, regulation or order of the Commissioner until and unless the said Commissioner shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended rule, regulation or order in three (3) newspapers published and having general circulation in the State of Texas once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act; provided that in lieu of the publishing in newspapers of rules, regulations, orders, amendments and modifications, as stated above, the Commissioner may publish and circulate said rules, regulations, orders, amendments or modifications in such form or manner as he may determine.

**Affidavit of Commissioner stating terms of order and publication thereof  
prima facie evidence**

Sec. 16. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the inspector of boilers or any deputy inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be prima facie evidence of all such facts, and such affidavit shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

**Disposition of funds collected; State Boiler Inspection Fund**

Sec. 17. The funds collected under the provisions of this Act shall be paid into the State Treasury and kept in a special fund to be known as the "State Boiler Inspection Fund" and shall be paid out for salaries, traveling expenses and other necessary expenses specified in this Act and upon proper account duly approved by the Commissioner.

**Appropriation**

Sec. 18. There is hereby appropriated out of the General Revenue Fund of the State of Texas the sum of Twenty Thousand Dollars (\$20,000), or so much thereof as may be necessary not otherwise appropriated, for the purposes of carrying out the provisions of this Act; said amount that may be expended out of this appropriation shall be replaced and refunded to the General Revenue Fund by the Commissioner from fees collected under the terms of this Act during the first year of the operation of this Act. However, any monies remaining in said fund at the end of the fiscal year ending August 31, 1937, are re-appropriated to the use of the Commissioner for the purpose of carrying out the provisions of this Act. Any unexpended balance or funds remaining in the "State Boiler Inspection Fund" at the end of the fiscal year ending August 31, 1938, not exceeding Ten Thousand Dollars (\$10,000) is hereby appropriated for the use of the Commissioner to carry out the purposes of this Act, and for each

succeeding fiscal year any unexpended balance remaining in the "State Boiler Inspection Fund" not exceeding Ten Thousand Dollars (\$10,000) shall be carried forward for the purpose of the enforcement of this Act, provided, however any amount remaining in said fund in excess of Ten Thousand Dollars (\$10,000) at the end of any fiscal year after 1938 shall revert to the General Revenue Fund of the State of Texas.

**Partial invalidity**

Sec. 19. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason such invalidity shall not affect the remaining portions or provisions hereof. Acts 1937, 45th Leg., p. 893, ch. 436.

Effective June 3, 1937.

Section 20 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Section 4 of amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to provide for the inspection of steam boilers; defining certain terms; requiring a Certificate of Operation and registration of certain boilers; exempting certain boilers from the provisions of the Act; providing for appointment of an inspector of steam boilers and deputy inspectors; providing every insurance company insuring boilers in this State shall file certain reports showing policies of insurance and inspections with the Commissioner; providing that commissions as inspectors may be issued to certain persons; providing for promulgation of rules and regulations by the Commissioner of Labor covering the inspection and operation of steam boilers; providing for certain hearings; providing for collection of fees for boiler inspection; providing for publication of rules and regulations; providing for penalties for failure to comply with the provisions of this Act and rules enacted pursuant thereto; providing for injunction proceedings after notice; providing for

clerical assistants and supplies; fixing salaries; creating a "State Boiler Inspection Fund" and appropriating the monies deposited in said Special Fund to pay the expenses of the administration of said Act; making an appropriation of Twenty Thousand Dollars (\$20,000), or so much thereof as may be necessary, out of the General Fund of the State of Texas for the purpose of paying expenses during the first year of the operation of said Act and providing for the refunding any amount expended out of said Twenty Thousand Dollars (\$20,000) appropriated to the General Fund out of fees collected during the first year of the administration of said law; appropriating any unexpended balance remaining in said Fund at the end of the fiscal year 1937, and appropriating any unexpended balance, not exceeding Ten Thousand Dollars (\$10,000) at the end of the fiscal year 1938, and appropriating any unexpended balance remaining in said Fund at the end of each succeeding fiscal year not to exceed Ten Thousand Dollars (\$10,000) for the purpose of enforcing the Act and providing that balances in excess of said Ten Thousand Dollars (\$10,000) at the end of the fiscal year 1938 shall be transferred and credited from such Special Fund to the General Fund of the State; providing a saving clause; and declaring an emergency. [Acts 1937, 45th Leg., p. 893, ch. 436.]

## TITLE 85—LANDS—ACQUISITION FOR PUBLIC USE

### 2. FEDERAL USE

- | Art.  | Art.  |
|---|---|
| 5244a. Municipal corporations and political subdivisions or districts; conveyances to United States in aid of navigation, flood control, etc.; prior conveyances validated [New]. | 5244a—2. Commissioners' Court authorized to convey land to United States for flood control near Mexican boundary [New]. |
| 5244a—1. Highway Commission authorized to grant easements or interests in land to United States for flood control in counties near Mexican boundary [New].                        | 5248b. Granting easement to United States for Louisiana and Texas Intra-coastal Waterway [New].                         |
|   | 5248c. Counties authorized to convey lands to the United States [New].  |
|   | 5248d. Lands conveyed to the United States for military purposes [New].   |

### 2. FEDERAL USE

**Art. 5244a.** Municipal corporations and political subdivisions or districts; conveyances to United States in aid of navigation, flood control, etc.; prior conveyances validated

**Section 1.** When any County one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any County contiguous to any County of such described class, and when any City, Town, Independent School District, Common School District, Water Improvement District, Water Control and Improvement District, Navigation District, Road District, Levee District, Drainage District, or any other municipal corporation, political subdivision or District organized and existing under the Constitution and laws of this State, which may be located within any County of such described class, may be the owner of any property, land, or interest in land desired by the United States of America to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, any such County, City, Town, or other municipal corporation, political subdivision, or District of this State is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title or easement to any part of such property, land, or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to convey the same with or without monetary consideration therefor to the United States of America, or to any other of the political subdivisions herein enumerated which by resolution of its governing body may have heretofore agreed or may hereafter agree to acquire and convey the same, for ultimate conveyance to the United States of America and all such conveyances heretofore made are hereby ratified and confirmed. Provided that nothing in this Act is intended, nor shall this Act cede any of the rights of the Arroyo-Colorado Navigation District of Cameron and Willacy Counties, which District was formed in 1927 under the Acts of the Thirty-ninth Legislature, from dredging, widening, straightening, or otherwise improving the Arroyo-Colorado and all other lakes, bays, streams or bodies of water within said Navigation District or adjacent or appurtenant thereto, as a Navigation Project or the construction of turning basins, yacht basins, port facilities, reserving to said District all rights

conferred by law in developing said Navigation Project and all improvements incident, necessary or convenient thereto.

Sec. 2. If any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby. Acts 1937, 45th Leg., p. 145, ch. 77.

Effective March 26, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Easements granted to facilitate operation of Lower Rio Grande Flood Control Project by United States, see art. 7880—147v(1).

**Title of Act:**

An Act to authorize any County, one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any County contiguous to any County of such described class, and all Cities, Towns, Independent School Districts, Common School Districts, Water Improvement Districts, Water Control and Improvement Districts, Navigation Districts, Road Districts, Levee Districts, Drainage Districts, and all other municipal corporations, political subdivisions or Districts organized and existing under the Constitution and laws of this State, which may be located within any County of such described class, to convey to the United States of America with or without monetary consideration, upon request therefor, title or easement to property, lands, or interest in lands owned by such municipal corporations, political subdivisions or dis-

tricts, to enable any department or establishment of the United States to carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses, and in order to accomplish any and all of the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, and authorizing any and all such Counties, Cities, Towns, and other public municipal corporations and Districts above enumerated to convey with or without monetary consideration to any other of the political subdivisions herein enumerated which, by resolution of its governing body, may have heretofore or may hereafter agree to acquire and convey the same, for ultimate conveyance, to the United States of America; validating any such conveyance heretofore made by any such political subdivision; providing that nothing in this Act shall affect the rights of the Arroyo-Colorado Navigation District of Cameron and Willacy Counties in regard to the improving of the Arroyo-Colorado and other projects; providing that if any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby; and declaring an emergency. [Acts 1937, 45th Leg., p. 145, ch. 77.]

**Art. 5244a—1. Highway Commission authorized to grant easements or interests in land to United States for flood control in counties near Mexican boundary**

Whenever the State of Texas shall be the owner of any land, or interest in land, acquired for use as a right-of-way for any State highway in any County, one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or in any county contiguous to any county of such described class, which is used or proposed to be used as a part of the site for flood control works, constructed or to be constructed by any such county or by the United States of America, for the purpose of controlling the flood waters of any navigable stream of this State, the State Highway Commission is hereby authorized and empowered, upon request by the United States through its proper officers, or upon the request of the County Judge of any such County, to convey to the United States of America, or to any such County, (which has agreed to convey said lands or interest therein to the United States pursuant to an Act of Congress), without monetary consideration therefor, an easement or interest in such land which may be necessary for the construction, operation, and maintenance of such works; and in the event the fee simple title to such lands is not vested in the State and the owner of the fee has executed an easement to such lands for flood control purposes, the Highway Commission is authorized and empowered to join in and assent to such easement. The State Highway Commission is authorized at its discretion to execute the necessary deeds, conveyances, or agreements for the purposes stated,

to be signed by the Chairman pursuant to the order of the Commission, and all such conveyances and agreements heretofore made are hereby ratified and confirmed. The Commission may in lieu of the monetary consideration waived herein above, make such reservations and agreements as it deems necessary for the best interests of the State and its highway system, with reference to the alteration, construction, reconstruction, operation and maintenance of such structures and facilities now used, or hereafter to be used, for highway purposes in, upon, or across the lands, or interest therein, desired for flood control purposes. Acts 1939, 46th Leg., p. 480, § 1.

Effective April 18, 1939.

Section 2 of the act provided that if any section, word, phrase, or clause, in the Act be declared unconstitutional for any reason, the remainder of the Act should not be affected thereby. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

Easements granted to facilitate operation of Lower Rio Grande Flood Control Project by United States, see art. 7880—147v(1).

**Title of Act:**

An Act to authorize the State Highway Commission, acting through its Chairman pursuant to order of the Commission, to convey lands or interests therein, owned by the State of Texas, acquired for use as a right-of-way for State highways in any county, one or more of the boundaries of which is coincident with any part of the

International Boundary between the United States and Mexico, or in any county contiguous to any County of such described class, which is used or proposed to be used as a part of the site for flood control works, to the United States of America, or to any county of such described class, without monetary consideration, to enable the United States to carry out the provisions of Acts of Congress; and authorizing the State Highway Commission to join in and assent to easements executed by owners of the fee title to lands on which the State owns only an easement; validating any such conveyance heretofore made; providing that if any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby; and declaring an emergency. Acts 1939, 46th Leg., p. 480.

**Art. 5244a—2. Commissioners' Courts authorized to convey land to United States for flood control near Mexican boundary**

Section 1. The Commissioners' Court of any county one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any county contiguous to any such county, which may have entered into an agreement with the United States of America to acquire and upon request convey to the United States, with or without monetary consideration, land or interest in land desired by the United States to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, irrigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title to land or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to secure by gift, purchase or by condemnation, for ultimate conveyance to the United States, the land or interest in land described in such request from the United States, and to pay for the same out of any special flood control funds or any available county funds. Provided, that in the event of condemnation by the county the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271 inclusive, Revised Civil Statutes of Texas of 1925, and Acts amendatory thereof, and supplementary thereto; Provided, further, that at any time after the award of the Special Commissioners the county may file a declaration of taking signed by the County Judge, after proper resolution by the Commissioners' Court, declaring that the lands, or interest therein, described in the original petition are thereby taken for a public purpose and for ultimate conveyance

to the United States. Said declaration shall contain and have annexed thereto—

(1) A description of the land taken sufficient for the identification thereof.

(2) A statement of the estate or interest in said land taken, and the public use to be made thereof.

(3) A plan showing the lands taken.

(4) A statement of the amount of damage awarded by the Special Commissioners or, by the jury on appeal for the taking of said land.

Sec. 2. Upon the filing of said declaration of taking with the County Clerk and the deposit of the amount of the award in money with the County Clerk, subject to the order of the defendant, and the payment of the costs, if any, awarded against the county, title in fee simple, or such less estate or interest therein specified in said declaration, shall immediately vest in the county, and said land shall be deemed to be condemned and taken for the uses specified, and may be forthwith conveyed to the United States and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said eminent domain proceeding and established by judgment therein against the county filing the said declaration; provided, further, that no appeal from such award nor service of process by publication shall have the effect of suspending the vesting of title in said county and the only issue shall be the question as to the amount of damages due to the owner from said county for the appropriation of said lands or interest therein for such public purpose. Acts 1939, 46th Leg., p. 482.

Effective April 18, 1939.

Section 3 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Easements granted to facilitate operation of Lower Rio Grande Flood Control Projects by United States, see art. 7880—147v (1).

**Title of Act:**

An Act to authorize any county, one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any county contiguous to any county of such described class, which may have entered into an agreement with the United States to acquire and upon request convey to the United States land or interest in land desired by the United States in aid of navigation, irrigation, flood control or improvement of water courses, and in order to accomplish the purposes specified in

Article 5242 of the 1925 Revised Statutes of Texas, upon request of the United States, to secure by gift, purchase or by condemnation, said land or interest therein, for ultimate conveyance to the United States and to pay for the same out of any special flood control fund or any available county funds; providing for the method of procedure in condemnation cases; providing that title shall vest in the county upon the filing of a declaration of taking by the county and the deposit of the amount of the award with the County Clerk, together with costs, if any, and the right to just compensation shall vest in the persons entitled thereto; and provided further, that no appeal nor service of process by publication shall have the effect of suspending the vesting of title in said county, and declaring an emergency. Acts 1939, 46th Leg., p. 482.

**Art. 5248b. Granting easement to United States for Louisiana and Texas intracoastal waterway**

Section 1. That there is hereby granted and conveyed to the United States of America the free and uninterrupted use, liberty, and easement to construct and maintain the Louisiana and Texas Intracoastal Waterway over and through disconnected portions of bays and any tidal lands owned by the State of Texas within an area three hundred (300) feet in width extending from the Galveston-Brazoria County line to the nine-foot contour in Aransas Bay along the route of the projected Louisiana and Texas Intracoastal Waterway as shown in red on map, in four (4) sheets, prepared by the United States Engineer Office, Galveston, Texas, entitled "Louisiana and Texas Intracoastal Waterway, Survey of 1927-1928,"



Index Sheets Nos. 1, 2, 3, and 4, File No. 16-4-4, and the further free and uninterrupted use, liberty, and easement to deposit dredged material during construction and maintenance of the waterway in bays and on tidal lands owned by the State of Texas within two thousand (2,000) feet of the above described area, said portions of bays and tidal lands being located in Brazoria, Matagorda, Calhoun, and Aransas Counties.

Sec. 2. Provided, however, that should the United States of America fail or refuse to construct said Intracoastal Waterway prior to January 1, 1947, or should said Government cease to maintain or to have maintained said Intracoastal Waterway at any time, then this right of easement shall cease and determine, and all right of whatsoever nature shall revert and be vested in the State of Texas.

Sec. 3. Provided, further, that nothing in this Act shall be construed to affect or impair any vested rights. Acts 1937, 45th Leg., p. 801, ch. 393.

Effective 90 days after May 22, 1937, date of adjournment.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act granting to the United States of America easement to construct and main-

tain the Louisiana and Texas Intracoastal Waterway over and through portions of bays and tidal lands owned by the State of Texas in Brazoria, Matagorda, Calhoun, and Aransas Counties; providing for a forfeiture; protecting vested rights; and declaring an emergency. [Acts 1937, 45th Leg., p. 801, ch. 393.]

**Art. 5248c. Counties authorized to convey lands to the United States**

Section 1. That any county having title to a plot of ground used for public purposes which is of area in excess of the needs of the county for its public purposes may sell, at private sale, for any fair consideration, and approved by its Commissioners Court, such excess area or any part thereof to the United States of America under the provisions of the Statutes of the United States of America authorizing the acquisition of sites for public buildings. The Commissioners Court of any county is hereby invested with full power to determine whether such excess of area exists, and the extent to which such excess may be sold and conveyed for any such purpose.

Sec. 2. All conveyances to the United States of America under the provisions of this Act must be authorized by the Commissioners Court of the county by an order entered upon its minutes in which it shall describe the portion of such plot of public ground to be conveyed, the consideration to be paid and shall direct that the County Judge of such county execute in the name of the county by him as County Judge a conveyance to the United States of America and make due delivery thereof upon payment of such consideration to its proper officer, which conveyance shall be in such form and contain such covenants and warranties as may be prescribed by said Commissioners Court.

Sec. 3. That all proceedings and orders heretofore had and made by the Commissioners Court of any county undertaking to sell and provide for the conveyance of a part or parts of any plot of ground such as is described in Section 1 hereof to the United States of America, pursuant to any advertisement by its officers inviting proposals to sell site for any public building be and the same are hereby validated, and legalized, as well as any deed executed and delivered or hereafter executed and delivered carrying out any such sale.

Sec. 3a. Provided, however, said Commissioners Court shall incorporate in any deed of conveyance to the United States of America a provision reserving concurrent jurisdiction over said lands for the purpose

of serving all State criminal and civil process. Acts 1939, 46th Leg., p. 138.

Effective May 23, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act authorizing any county having title to a plot of ground used for public purposes, the area of which is in excess of the needs of the county for its public purposes, to sell such excess or any part thereof at private sale for any fair consideration and approved by its Commissioners Court to the United States of America under the provisions of its Statutes; authorizing the acquisition of sites for public buildings; vesting in the Commissioners Court the

power to make such sales and prescribing its procedure in regard thereto and how and by whom conveyance is to be made in carrying out any such sale; validating and legalizing all proceedings and orders heretofore had and made by the Commissioners Court of any county undertaking to make any such sale to the United States of America as well as any deed executed and delivered or hereafter executed and delivered, carrying out any such sale; providing the Commissioners Court shall incorporate in any deed of conveyance to the United States of America a provision reserving concurrent jurisdiction over said lands for the purpose of serving all State criminal and civil process; and declaring an emergency. Acts 1939, 46th Leg., p. 138.

**Art. 5248d. Lands conveyed to the United States for military purposes**

Section 1. That there is hereby granted and conveyed to the Government of the United States of America the free and uninterrupted use, liberty, and easement of, in, and to that certain area three (3) miles square or larger, or of different form, in Nueces County Navigation District, in Nueces Bay, in Nueces County, Texas, as the proper agent or agents of the United States Government may designate for the erection and maintenance of forts, military stations or camps, magazines, arsenals, dock yards, barracks, lighthouses, navy yards, naval bases, naval air bases, naval air stations, channels, approaches for battleships, or for other needful military purposes.

Sec. 2. If the United States of America shall not desire to utilize said area for said purposes or any of said purposes, and shall fail or refuse to erect said forts, military stations or camps, barracks, naval bases, naval air bases or stations, or other needful military purposes, prior to January 1, 1949, or should said Government cease to maintain or to have maintained said forts, military stations or camps, barracks, naval bases, naval air bases or stations, channels and approaches, at any time, then the right of easement, use, and liberty herein granted shall cease and determine, and all right of whatsoever nature by virtue hereof shall revert and be re-vested in the State of Texas.

Sec. 3. If and when the proper authority or agent of the United States of America may demand, the Governor of the State of Texas shall convey said area to the Government of the United States of America for the purposes herein set forth. The use, liberty, and easement herein authorized shall be upon the express condition that the State of Texas shall retain all of the oil and gas and mineral rights, and that the State of Texas shall convey said public domain to the United States of America under the limitation in Articles 8225, 5242, 5245, and 5247 of the Revised Civil Statutes of Texas, and such approval and authorization of the Legislature of the State of Texas is hereby given. Acts 1939, 46th Leg., Spec.L., p. 546.

Effective May 10, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act conveying to the United States of America the free and uninterrupted use, liberty, and easement of, in, and to that cer-

tain area of three (3) miles square or larger in Nueces County Navigation District, in Nueces Bay, in Nueces County, Texas, for the erection and establishment of forts, military stations or camps, magazines, arsenals, dock yards, barracks, lighthouses, navy yards, naval bases, naval air bases or stations, channels, approaches for

battleships, or for other needful military purposes; providing for failure or refusal for the erection of such forts, stations, arsenals, naval bases, naval air bases or stations, and other needful military structures; providing for the conveyance by the Governor of Texas of such area; providing for the retention of all oil, gas, and miner-

als; making such conveyance subject to the limitation of certain Statutes of the State; providing approval by the Legislature of such conveyance; providing for the reversion of said area to the State of Texas under certain contingencies; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 546.

## TITLE 86—LANDS—PUBLIC

## CHAPTER TWO—SURVEYORS AND SURVEYS

## 2. COUNTY SURVEYORS

## Art. 5285. [5308] [4076] Deputy

Each County Surveyor may appoint a Deputy Surveyor as he may deem necessary, and shall administer his official oath and take his bond in the sum of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), conditioned for the faithful performance of the duties of his office. The Deputy may do all acts authorized or required by law to be done by the County Surveyor. [As amended Acts 1937, 45th Leg., p. 380, ch. 187, § 1.]

Amendment of 1937, effective April 23, 1937.

Section 2 of the amendatory Act of 1937 declared an emergency making the Act effective on and after its passage.

## CHAPTER THREE—SURFACE AND TIMBER RIGHTS

## 2. SALES

Art.

5326f. Repurchase of land in Dallam and Hartley Counties previously set aside for State Capitol Building [New].

5326g—1. Resales and awards of school lands to spouse of forfeiting

Art.

owner validated in counties of 6,400 to 6,500 population [New].

5330b. Sale of public lands along western Oklahoma and eastern Texas boundary authorized [New].

## 2. SALES

## Art. 5326f. Repurchase of land in Dallam and Hartley Counties previously set aside for state capitol building

Section 1. That where land heretofore set apart in Dallam and Hartley Counties, Texas, to build the Capitol Building of the State of Texas, that has been recovered by the State and appropriated as provided by law and heretofore purchased from the State, has been forfeited or is subject to being forfeited for nonpayment of interest and such lands in Block 76 in Loving County, Texas, not forfeited, reappraised, and repurchased under the provisions of Chapter 94, Page 267, Acts of 1925, as amended by the Acts of 1926, Thirty-ninth Legislature, First Called Session, Chapter 25,<sup>1</sup> Page 43, and/or principal accrued prior to the date of the passage of this Act, said lands shall be forfeited and reappraised by the State Land Commissioner, or his duly authorized agent, and that notice of the reappraisal shall be given to the former owner or owners, who shall have a preference of ninety (90) days after the date of notice to repurchase the same upon the terms and conditions provided in Chapter 94, Page 267, Acts of 1925, as amended by the Acts of 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, Page 43. And provided further, that any person, or persons, owning any of such land which is not subject to being forfeited as now provided by law, may have the right, at his option, to have said land forfeited and reappraised in the same manner hereinabove provided and that he be given the same preference right to repurchase said land at the newly appraised value by the same method as hereinabove provided; provided that in repurchasing said land, all

persons shall be given credit for all principal which has heretofore been paid upon said land and that when such person, or persons, has paid the amount of the new appraisal, he shall be entitled to a patent to said land from the State Land Commissioner as provided by law, and, provided that in no event shall any money heretofore paid on said land be refunded to any purchaser or purchasers of said land.

Sec. 1-a. When the Commissioner of the General Land Office has reappraised the above mentioned land, he shall submit a statement to the Governor and the Attorney General showing the valuation placed upon each separate tract and it shall be the duty of the Governor and the Attorney General to approve or disapprove the valuations placed upon said property and to advise the Commissioner of the General Land Office of such approval or disapproval of said valuations and if said valuations are approved by both the Governor and the Attorney General, the same shall be sold as above provided, but unless both the Governor and the Attorney General approve such valuations, no such sale shall be made.

Sec. 2. That any person wishing to repurchase any of said land against which any taxes of any nature are delinquent shall pay said taxes and any interest, penalties, and costs that may have accrued on said land and shall provide the Land Commissioner with a tax receipt showing said taxes to be paid, said taxes to be paid within the ninety (90) days provided in which time said person, or persons, are entitled to repurchase said land. Acts 1937, 45th Leg., p. 665, ch. 332.

<sup>1</sup> Article 5326a.

Became law, without Governor's signature May 14, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to provide for the repurchase of land located in Dallam and Hartley counties heretofore set apart to build the Capitol Building of the State of Texas, that has been recovered by the State, and repurchased as provided by the laws of this State and forfeited or that is subject to being forfeited for nonpayment of interest and certain lands in Block 76 in Loving County not forfeited, reappraised, and repurchased under the terms and conditions provided in Chapter 94, Page 267, Acts of 1925, as amended by the Acts of 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, Page 43, and/or principal accrued prior to the date of the passage of this Act, and giving a preference right to the owners of such lands or part thereof at any time within nine-

ty (90) days after the date of notice of re-valuation of such land to repurchase the same upon the terms and conditions provided in Chapter 94, Page 267, Acts of 1925, as amended by Acts of 1926, Thirty-ninth Legislature, First Called Session, Page 43, Chapter 25; and providing that any owner or owners of such land may ask that such owner's or owners' land be forfeited as provided by law whether the same is delinquent or not and that he be allowed to repurchase said land at the price placed thereon by a new appraisal; providing for reappraisal of said land; and further providing for the payment of taxes on said land; providing the Commissioner of the General Land Office shall submit a statement, showing the valuation placed upon each separate tract, to the Governor and the Attorney General which it shall be their duty to approve or disapprove, and if approved by both, the same shall be sold as above provided; and declaring an emergency. [Acts 1937, 45th Leg., p. 665, ch. 332.]

**Art. 5326g—1. Resales and awards of school lands to spouse of forfeiting owner validated in counties of 6,400 to 6,500 population**

In cases where public school land in counties with a population of not less than six thousand four hundred (6,400) nor more than six thousand five hundred (6,500) according to the last preceding Federal Census, was forfeited prior to January 1, 1938, and came under the terms of either Acts 1925, Thirty-ninth Legislature, Regular Session, Chapter 94, page 267, an Act approved March 19, 1925,<sup>1</sup> or Acts 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, page 43, an Act approved October 27, 1926,<sup>2</sup> or any amendments to either of said Acts, and either the forfeiting owner or the spouse of the forfeiting owner filed, prior to January 1, 1935, his request for the re-valuation of such lands

and said request was granted; and said lands were re-valuated by the Commissioner of the General Land Office and such lands re-sold or awarded by the Commissioner of the General Land Office, prior to January 1, 1938, to the spouse of such forfeiting owner, then such resale or award to such spouse of such forfeiting owner is hereby confirmed and validated and shall be deemed as valid as if such resale or award had been made to and in the name of the forfeiting owner himself. Acts 1939, 46th Leg., p. 702, § 1.

1 Following article 5326.

2 Article 5326a.

Effective April 19, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to confirm and validate all resales and awards of public school lands in counties with a population of not less than six thousand four hundred (6,400) nor more than six thousand five hundred (6,500), according to the last preceding Federal Census, to the spouse of the forfeiting owner, where such public school lands were forfeited prior to January 1, 1938, and came under the terms of either Acts 1925, Thirty-ninth Legislature, Regular Session, Chapter 94, page 267, or Acts 1926, Thirty-ninth Legislature, First Called Session, Chapter

25, page 43, or any amendments to either of said Acts, and either the forfeiting owner or the spouse of the forfeiting owner filed, prior to January 1, 1938, his request for the re-valuation of such lands and said request was granted and said land re-valuated by the Commissioner of the General Land Office, and such lands re-sold or awarded by the Commissioner of the General Land Office, prior to January 1, 1938, to the spouse of such forfeiting owner, and providing that such resale or award to such spouse of such forfeiting owner shall be deemed as valid as if such sale or award had been made in the name of the forfeiting owner himself; and declaring an emergency. Acts 1939, 46th Leg., p. 702.

#### Art. 5330b. Sale of public lands along western Oklahoma and eastern Texas boundary authorized

That from and after the effective date of this Act all public lands in this State situate along the western boundary of the State of Oklahoma and the eastern boundary of the State of Texas and along the 100th degree of west longitude, found to be in the State of Texas by final decree of the Supreme Court of the United States entered March 17, 1930, in the case of the State of Oklahoma vs. the State of Texas, the United States of America, intervenor, theretofore claimed by Oklahoma but now located in Lipscomb, Hemphill, Wheeler, Collingsworth and Childress Counties, are to be offered for sale in accordance with the provisions of Article 5330A, Revised Civil Statutes of Texas (Acts 1931, Forty-second Legislature, Page 311, Chapter 185). Acts 1939, 46th Leg., p. 478, § 1.

Effective June 30, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for the sale of public lands along the eastern boundary of the State of Texas and the western boundary of the State of Oklahoma; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., p. 478.

### CHAPTER FOUR—OIL AND GAS

#### 4. GENERAL PROVISIONS

Art.

5382a. Camp Hulen Lease Board [New].

#### 1. UNIVERSITY AND OTHER LANDS

##### Art. 5348. General provisions

For provisions covering the same subject matter, see Acts 1931, 42nd Leg., p.

452, ch. 271, as amended, set out as Article 5421c.

## 4. GENERAL PROVISIONS

## Art. 5382a. Camp Hulen Lease Board

Section 1. A Board is hereby created to consist of the Governor of the State of Texas, the Adjutant General of the State of Texas, and the four senior active general officers of the Thirty-sixth Division, Texas National Guard, who shall perform the duties hereinafter set out. The Board shall be known as "Camp Hulen Lease Board". The term "Board" whenever used in this Act shall mean "Camp Hulen Lease Board". This Board shall keep a complete record of all of its proceedings. A majority of said Board shall constitute a quorum for the transaction of business.

**Oil, gas, and mineral leases by Board authorized**

Sec. 2. All lands, or any parcel of the same, now owned or that may be owned, and held in trust for the use and benefit of the Thirty-sixth Division, Texas National Guard, by the State of Texas, as a permanent camp site for the said Thirty-sixth Division, Texas National Guard, and those now owned and so held in trust at or near Palacios, Matagorda County, Texas, known as Camp Hulen, may be leased by the Board to any person or persons, firms or corporations, subject to and as provided for in this Act for the purpose of prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving, selling and disposing of the oil, gas and sulphur and other sub-surface minerals therein belonging to the State, and by it held in trust for the Thirty-sixth Division, Texas National Guard.

**Surveys and subdivision of lands into lots, blocks, or tracts; Board authorized to perfect title**

Sec. 3. The Board is hereby authorized to cause said lands to be surveyed and sub-divided into such lots, blocks or tracts as will be conducive or convenient to facilitate the advantageous sale of oil and gas and sulphur leases thereon, and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board is authorized to obtain complete abstracts of title to such lands and to cause same to be examined, to take such steps by court action or otherwise, as it may deem necessary to perfect a merchantable title to such lands in the State of Texas, in trust for the use and benefit of the Thirty-sixth Division, Texas National Guard; such abstracts of title and other title papers shall be held on file in the General Land Office as public documents for the inspection of any prospective purchaser of oil and gas or sulphur or other sub-surface mineral leases on said lands.

**Board to place oil, gas, and mineral leases on market when conditions favorable; mode of sale determined by Board; advertisement and notice; rejection of bids**

Sec. 4. Whenever, in the opinion of the Board, there shall be such a demand for the purchase of oil, gas, and sulphur or other sub-surface mineral leases on any lot or tract of said land as will reasonably insure an advantageous sale thereof, the Board shall place such oil and gas or sulphur or other sub-surface mineral leases on the market in such blocks or tracts as the Board may designate. The Board shall have the power to determine whether said proposed sale or lease of said land shall be by public auction on the front steps of the State Capitol to the highest bidder or shall be by proposals submitted in the form of sealed bids for the purchase of said oil and gas or sulphur or other minerals by lease; pro-

vided, however, that said sale or lease in any event shall be only made after due advertisement thereof has been given in three daily papers of general circulation, published in the State of Texas, giving fifteen (15) days' notice of the proposed sale or lease of said lands, and giving a brief description of said land proposed to be leased for oil, gas, sulphur or mineral purposes. That where said land is to be sold under sealed bids for development by lease, said notice shall designate the day when sealed bids will be opened at ten o'clock A. M. on that day. The Board may in its discretion, in addition to said advertisement in newspapers, cause such other additional advertisements to be made as they might deem advantageous. Provided, further, that the Board shall have the right to reject any and all bids.

**Sealed bids**

Sec. 5. That where said land is to be leased for oil, gas or sulphur or other mineral development under sealed bids, all bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids, and upon that day the said Board, or a majority of its members, shall open said bids and shall list, file and register all bids and money received. A separate bid shall be made for each whole survey or sub-division thereof. No bid shall be accepted which offers a royalty of less than one-eighth (1/8) of the gross production of oil, gas, or sulphur in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, two-thirds of the members concurring before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than One (\$1.00) Dollar annually per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years unless in the meantime production in paying quantities is had upon the land.

**Drilling and production operations subject to State laws and orders of Railroad Commission; provision to be incorporated in lease**

Sec. 5a. The operations for drilling for oil and gas and the production therefrom under any lease made by the Board under the authority given in this Act shall be subject to all laws of the State of Texas and valid orders made by the Railroad Commission of Texas under such laws regulating and controlling the development of leases for the production of oil and gas, and the production of oil and gas therefrom. The Board shall incorporate this provision in each and every lease executed under the authority of this Act.

**Bid to be accompanied by payment and indicate royalty and additional payments**

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth (1/8) of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and the annual payment provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

**Leasing to be consistent with use of camp for annual field training; rejection of bids and new offer to lease**

Sec. 7. If any one of the bidders shall offer a reasonable and proper price therefor, not less than the price fixed by the Board, the lands ad-



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

vertised, or any whole survey or sub-division thereof, may be leased for oil, gas, sulphur or other mineral purposes under the terms of this Act and such regulations as the Board may prescribe, which are in the opinion of the Board not inconsistent with the use of said lands for the annual field training of the Thirty-sixth Division, Texas National Guard, and are not inconsistent with the provisions of this Act. If after any bidding by sealed bids, the Board should reject all bids as it is hereby authorized to do, it may thereafter offer for sale, and sell the oil, gas, sulphur or other minerals in the land in separate whole surveys, or subdivisions thereof, by open public auction, or in such other manner as said Board may deem to be desirable.

**Satisfactory bid filed in General Land Office; discontinuance of yearly payment; termination of lease**

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur, or other minerals, it shall be filed in the General Land Office. Whenever the royalty shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of five years, oil, gas, sulphur or other minerals, shall not have been produced in paying quantities, the lease shall terminate.

**Sale of oil, gas, or minerals by public auction**

Sec. 9. The Board may at its option, offer for sale and sell the oil, gas, sulphur, or other minerals, in said lands by open public auction on the front steps of the State Capitol in lieu of the method of selling said oil, gas, sulphur or other minerals by sealed bids. Where oil, gas, sulphur or other minerals in said lands is to be sold at public auction, the Board shall cause to be advertised a brief description of the land from which the oil, gas, sulphur or other minerals is proposed to be sold, fixing a designated day and hour for said sale at the State Capitol steps at Austin, Texas. Whenever any sale of the oil, gas, sulphur or other minerals is to be made at public auction, the Board prior to the promulgation of its advertising, shall fix a minimum price at which oil, gas, sulphur, or other minerals in such land shall be sold, not less than one-eighth ( $1/8$ ) of the gross production of gas, oil, sulphur or other minerals in the land proposed to be sold and in an amount of not less than One Dollar per acre for annual rental for delay in drilling. That all leases shall terminate after a period of five years unless production in paying quantities is had upon the land within said period. That no auctioneer, or person acting in said capacity, shall be paid a fee for the sale of said minerals in said lands in excess of One Hundred (\$100.00) Dollars per day. The successful bidder at public auction shall be required to immediately post with the Board in cash or by check payable in Austin, Texas, as evidence of good faith, the amount of his bid, being the amount of bonus and the one payment of annual rental in advance for delay in drilling.

**Rentals not payable during drilling operations preceding discovery of oil, gas, or minerals; duration of lease; duty to develop and prevent drainage; penalty**

Sec. 10. If during the time of any lease issued under the terms of this Act, the lessee shall be engaged in actual drilling operations for the discovery of oil, gas, sulphur or other minerals on land covered by any such lease, no rental shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil, gas, sulphur or other minerals are discovered in paying quantities on any tract of land covered by any such

lease, then the lease as to such tract shall remain in force so long as gas, oil, sulphur or other minerals are produced in paying quantities from such tract. In the event of the discovery of oil, gas, sulphur or other minerals on any tract covered by any such lease, then the lease as to such tract shall remain in force so long as oil, gas, sulphur or other minerals are produced in paying quantities from such tract. In the event of the discovery of oil, gas, sulphur or other minerals on any tract covered by a lease issued hereunder, or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract from such lease and to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to the penalties provided in Sections 12 and 13 of this Act.

**Title to rights purchased; assignment of rights; relinquishment of rights; pipe lines, telephone lines, and roads**

Sec. 11. Title to all rights purchased may be held by the owner so long as the area produces oil, gas, sulphur or other minerals in paying quantities. All rights purchased may be assigned in quantities of not less than forty (40) acres unless there be less than forty (40) acres remaining in any survey or tract, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred (100) days after the date of the first acknowledgment thereof accompanied by Ten (10¢) Cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State in trust for the Thirty-sixth Division, Texas National Guard, at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed in the Land Office accompanied by One (\$1.00) Dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe lines, telephone lines and the opening of such roads as may by it be deemed reasonably necessary for and incident to the purposes of the lease.

**Royalty, payment for use of National Guard Division; time of payment; sworn statement; books and records filed and subject to inspection**

Sec. 12. Royalty as stipulated in the sale and in all leases on said land and all other moneys accruing or arising from the effects of this bill or the operations of the Board shall be paid to the General Land Office, Austin, Texas, for the exclusive use and benefit of the Thirty-sixth Division, Texas National Guard, on or before the 20th day of each succeeding month, for the preceding month during the life of the rights purchased, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report, and the amount of gas produced and sold off the premises and the market value of the oil and gas, or in the case of sulphur, or other minerals, the amount produced and sold and the market price therefor, together with all gauges of tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks or pools and gas lines or gas storage and/or sulphur vats or sulphur or other minerals storage. The books and accounts and all bids, receipts and discharges of all wells, tank pools, meters, pipe lines and vats and other storage and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil, gas, sulphur or other minerals shall at all times be

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

on file in the General Land Office and be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or any member of the Board.

**Protection of leased land from drainage or depletion from adjacent lands; effect of failure to protect**

Sec. 13. In every case where the area in which oil, gas, sulphur or other minerals are sold shall be contiguous or adjacent to land that is not within the area known as Camp Hulen land, the acceptance of the bid and the sale thereof will carry with it the obligation to adequately protect the land leased from drainage or depletion from the adjacent lands. In cases where the area in which the oil, gas, sulphur or other minerals are sold as a lesser royalty, the owner shall likewise protect the State and the Thirty-sixth Division, Texas National Guard, from drainage or depletion from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided, the sale and all rights thereunder may be forfeited by the Board as elsewhere provided herein for forfeiture.

**Forfeiture for default; suit to declare; reinstatement of lease; suit for damages; lien to secure payments under lease**

Sec. 14. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production, within thirty days after same shall become due, or if such owner, or his authorized agent, should make any false return, or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority access to other records and other data pertaining to operations under this Act, or if such owner or his authorized agent should fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well within thirty days after completion or abandonment or cessation of work for thirty days, or if any material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board, by an order entered upon the minutes of the Board, reciting the facts constituting the default and declaring the forfeiture. The Board may, if it so desires, have a suit instituted for forfeiture through the Attorney General of the State who shall be the legal advisor and attorney for the Board. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board, and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State, acting for the benefit of the Thirty-sixth Division, Texas National Guard, by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance or both, may be instituted. The State, for the use and benefit of the Thirty-sixth Division, Texas National Guard, shall have a first lien upon all oil, gas, sulphur or other minerals produced upon the leased area and upon all rigs, tanks, pipe lines, telephone lines, machinery and other material and appliances used in the production and handling of oil, gas, sulphur or other minerals produced thereon to secure any amount due thereon by the owner of said lease.

**Surveys, files, contracts, and records filed in General Land Office; payments of bonus, rentals and royalties; deposit and expenditure by Board**

Sec. 15. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized,

shall be filed in the General Land Office and shall constitute archives thereof. All payments of bonus, rentals and royalties hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall deposit said money with the State Treasurer in a special fund for the exclusive use and benefit of the Thirty-sixth Division, Texas National Guard, and all other payments, including filing assignments and relinquishment fees hereunder shall be credited to said fund; and said funds may be expended only upon the order of said Board for such purposes as may be deemed by said Board to be for the benefit of the Thirty-sixth Division, Texas National Guard, and the costs and expenses of administration of and under this Act, and none other.

**Warrants to pay expenses; appropriation**

Sec. 16. The expenses of executing the provisions of this Act shall be paid by warrants authorized by the Board and drawn by the State Comptroller on the State Treasury, and shall be paid by the State Treasurer out of the following appropriation, and for that purpose the sum of Two Thousand (\$2,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the State Treasury, not otherwise appropriated, for the biennium ending August 31, 1938.

**Forms, rules, and regulations of Board; withdrawal of lands advertised**

Sec. 17. The Board shall adopt proper forms and regulations, rules and contracts as will, in its judgment, protect the income from the lands leased hereunder, and for the use and expenditure of such incomes for the exclusive use and benefit of the Thirty-sixth Division, Texas National Guard. The Board shall have the right to withdraw any lands advertised for lease prior to receiving and opening of bids, and prior to the sale at public auction. Acts 1937, 45th Leg., p. 697, ch. 352.

Effective May 15, 1937.

Section 18 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act creating a Board for the lease of the land composing the permanent encampment for the Thirty-sixth Division, Texas National Guard, known as Camp Hulen, situated at or near Palacios in Matagorda County, Texas, and providing for the lease or sale of oil and gas and

sulphur and other minerals therein and defining the duties and powers of said Board; prescribing the mode and manner of leasing and selling oil, gas and sulphur in said lands, and the disposition to be made of the proceeds of such sales; making an appropriation to defray the expenses of enforcing this Act; and declaring an emergency. [Acts 1937, 45th Leg., p. 697, ch. 352.]

## CHAPTER FIVE—MINERALS

### 2. OTHER MINERALS

Art.

5400a. Political subdivisions authorized to lease land for mineral development [New].

### 2. OTHER MINERALS

Art. 5400a. Political subdivisions authorized to lease land for mineral development

Section 1. Political subdivisions which are bodies corporate with recognized and defined areas, are hereby authorized to lease for mineral

development purposes any and all lands which may be owned by any such political subdivision.

**Boards or bodies authorized to exercise right; procedure**

Sec. 2. The right to lease such lands shall be exercised by the governing board, the commission or commissioners of such political subdivision which are by law constituted with the management, control, and supervision of such subdivision, and when in the discretion of such governing body they shall determine that it is advisable to make a lease of any such lands belonging to such district or subdivision, such governing body shall give notice of its intention to lease such lands, describing same, by publication of such notice in some newspaper published in the county, having a general circulation therein, once a week for a period of three (3) consecutive weeks, designating the time and place after such publication where such governing body will receive and consider bids for such mineral leases as such governing body may determine to make. On the date specified in said notice, such governing board or body shall receive and consider any and all bids submitted for the leasing of said lands or any portions thereof which are advertised for leasing, and in the discretion of such governing body shall award the lease to the highest and best bidder submitting a bid therefor, provided that if in the judgment of such governing body the bids submitted do not represent the fair value of such leases, such governing body in their discretion may reject same and again give notice and call for additional bids, but no leases shall in any event be made except upon public hearing and consideration of said bids and after the notice as herein provided.

**Public auction; amount of royalty; term of lease**

Sec. 2a. Provided that all such leases may be granted by public auction and that no leases shall be executed in any case except and unless the lessor shall retain at least one-eighth royalty, provided further that in no case shall the primary term of said lease be for more than a period of ten (10) years from the date of execution and approval thereof. Acts 1937, 45th Leg., p. 568, ch. 279.

Effective May 5, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing political subdivisions

of the State of Texas to lease lands owned by such subdivisions for mineral development purposes and prescribing the method and manner of making such leases, and declaring an emergency. [Acts 1937, 45th Leg., p. 568, ch. 279.]

**CHAPTER SEVEN—GENERAL PROVISIONS**

**Art.**

- 5421c—1. Excess acreage where tract of land titled or patented [New].  
 5421c—2. Mineral leases under Relinquishment Act [New].  
 5421c—3. Control and disposition of lands set apart for permanent free school fund and asylum funds and mineral estate within tide-water limits; dedication of mineral estate to permanent school fund; School Land

**Art.**

- Board, creation and duties; Board of Mineral Development abolished [New].  
 5421g. Public free school lands withdrawn from sale or lease [New].  
 5421h—1. Functions, officers, employees, records, etc., of State Reclamation Engineer transferred to General Land Office; office abolished [New].

**Art. 5420. [5468] Adverse claimant; suit**

When any public lands are held, occupied, or claimed by any person, association or corporation, adversely to the State, or to any fund or when

lands are forfeited to the State for any cause, the Attorney General shall institute suit therefor, for rent thereon, and for any damages thereto. Any and all suits brought by the State under this Article and under the preceding Article must be brought in the county in which the land or any part thereof may lie. Nothing in this Act shall affect or apply to any suit or suits pending at the time this Act shall become effective. As amended Acts 1939, 46th Leg., p. 464, § 1.

Effective May 10, 1939. Section 2 of the amendatory Act of 1939 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 5421c. Regulating sale and lease of school lands, public lands and river bed; Board of Mineral Development created**

**Definitions; vacant and unsurveyed land subject to sale or lease; royalties; applications and procedure thereon**

Sec. 6. (a) Wherever the reference is made in this Act to "Commissioner," the same shall mean the Commissioner of the General Land Office.

Wherever the term "Good Faith Claimant" or "Claimant" is used in this Act, the same shall mean any person, firm, or corporation, occupying or using, or theretofore occupying or using, or whose predecessors in interest, have occupied or used a vacancy for purposes other than exploring for or removing oil, gas, sulphur, or other minerals therefrom with a good faith belief that the same was included within the boundaries of a survey or surveys previously titled, awarded or sold under circumstances that would, at the time the vacancy issue arose, have vested title thereto had said area actually been located within said survey or surveys, and whose said boundaries are shown to have been recognized boundaries in the community. Provided a person, firm, or corporation, or those under whom he claims, shall have said land in his inclosure or under definite recognized boundaries and be in possession thereof for a period of ten (10) years with a good faith belief that he was the owner thereof and that same was included within his survey, except that whenever the owner of the tract of land adjoining the alleged vacant area makes application to buy the same, and no prior application to purchase or lease such alleged vacant area is on file, then such owner of said adjoining tract of land, who otherwise qualifies as a good faith claimant, shall be considered a good faith claimant without regard to the length of time he may have owned said adjoining land, or had such alleged vacant tract inclosed, or under definite recognized boundaries and in possession with the belief that the vacant area was included within his survey.

"Vacancy," when used in this Act, means an area of unsurveyed school land not in conflict on the ground with lands previously titled, awarded, or sold, which has not been listed on the records of the Land Office as school lands and which on the date of the filing was neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the State to recover the same.

"Applicant," when used in this Act, means any person, other than a good faith claimant, who discovers and files application to purchase or lease a vacancy.

(b) The vacant and unsurveyed land included within this Act shall be subject to sale or lease under the terms of this Act. Any of such land shall be subject to sale to a good faith claimant whether the same shall be within five (5) miles of a well producing oil, gas, or other minerals in commercial quantities, or not; but such lands lying within five

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

(5) miles of a well producing oil or gas in commercial quantities shall not be subject to sale to any other person than a good faith claimant, but where there is no good faith claimant, or such claimant fails to exercise his preferential right, lands within such five-mile distance shall be subject to lease only, and all of such leases shall reserve to the State at least a one-eighth free royalty on oil, gas, sulphur, and other minerals. In all cases where the good faith claimant purchases the land within five (5) miles of a well producing oil, gas, or other minerals in commercial quantities, there shall be reserved to the State a free royalty of one-eighth of all oil, gas, sulphur, and other minerals. On all other vacancies sold there shall be a free royalty of one-sixteenth reserved to the State on all oil and gas production and one-eighth on sulphur and other minerals. Such royalty reserved by the State shall be one-eighth on oil and gas and one-sixth on sulphur and other minerals if a good faith claimant fails to exercise his preference right to purchase within ninety (90) days after the Commissioner determines the existence of the vacancy as hereinafter provided. Such sales shall provide that the purchaser shall have the right to execute oil, gas, and mineral leases on the land without the joinder or approval of the Commissioner, and all bonus money and rentals therefor shall be paid to and be the property of the purchaser, but any and all of such mineral leases shall provide for and reserve to the State the above-mentioned free royalty on all oil, gas, sulphur, and other minerals. On all vacancies leased by the State, there shall be reserved not less than a one-eighth free royalty on oil, gas, sulphur, and other minerals.

(c) Any applicant who claims that a vacancy exists and desires to lease or purchase same shall file in duplicate with the County Surveyor of the county in which any part of the land is situated a written application to purchase or lease, describing the land claimed to be a vacancy, and stating that he desires to purchase or lease same under the provisions of this Act. The application shall also state the names and addresses of all owners or claimants of land or any interest therein and of leases of any character thereon, adjoining, overlapping, or including the land claimed to be vacant, so far as the same may be ascertained from the records of the General Land Office, and of the office of the County Clerk of the county in which the land is located and from the tax rolls of such county. The application shall also state the names and addresses of all persons who, from facts known to the applicant, assert any right to said alleged vacant land, and same shall be sworn to and shall state the applicant knows of no other claimants than those listed.

Contemporaneously with the filing of the application, the applicant shall pay to said surveyor a filing fee of Five Dollars (\$5). The surveyor shall mark on the original and duplicate the exact hour and date of filing, shall return one application to the applicant and shall record the other in a book to be kept by him for that purpose. The application which is returned to the applicant shall, within ten (10) days after the date of filing with the surveyor of the county, be filed with the Commissioner who shall note thereon the date of filing. Applicant shall also pay a filing fee of One Hundred Dollars (\$100) to the Commissioner. Failure to file the application with the Commissioner within the time fixed, and to pay the filing fee, shall be a waiver of all rights under the application. As between applicants, priority shall date from the time of filing with the surveyor. In counties which have no County Surveyor, such preliminary filing shall be with the County Clerk and shall be recorded in a book to be kept for that purpose, but not in the deed records.

The Commissioner shall notify the applicant by letter of the estimate of the cost of proceedings under the application, and, within thirty (30) days after the date of such letter, the applicant shall make a deposit with the Commissioner to cover costs of all work which may be necessary in order to comply with the request contained in such application. Upon failure to make the deposit as required, all rights under the application shall be lost. In the event such deposit shall prove to be insufficient, the applicant shall be requested by letter to make a further deposit of a sum to be fixed by the Commissioner and, if such additional deposit be not made within thirty (30) days after the date of such letter, the work shall be discontinued and the application cancelled, and such cancellation shall be so endorsed on the application. Upon cancellation, the right to purchase or lease under such application shall be lost. The deposits provided for in this Section shall be a special trust fund to be used only for the purpose authorized by this Act. Provided that the applicant shall have the right of appeal from the estimate of cost so made by the Commissioner, to the District Court of Travis County by giving notice to the Commissioner in writing thereof within fifteen (15) days after the receipt of said estimate from said Commissioner as herein provided. And provided that said applicant shall have fifteen (15) days after the decision of said District Court as to amount in which to make payment thereof.

Upon filing of any such application with the Commissioner and upon the making of the required deposit as provided for herein, the Commissioner shall forthwith cause a notice of intention to survey to be mailed to all persons named in the application as interested persons, and at the addresses given therein, and to the Attorney General of Texas. The notices shall be deposited in the Post Office at Austin, Texas, at least ten (10) days prior to the date fixed for the beginning of such survey.

The Commissioner shall appoint a surveyor to make a survey in accordance with the notice. Such surveyor shall be a surveyor licensed by the State, or the County Surveyor of the County in which the land or a part thereof is situated. The fees and expenses to be paid for such work shall be such as may be fixed by law, or, if not so fixed, then such as the Commissioner and the surveyor may agree upon, but not in excess of such as may be reasonable for the work performed, all of which shall be paid by applicant.

A written report of the survey with field notes describing the land and the lines and corners so surveyed together with a plat showing the results of such survey shall be filed in the General Land Office within one hundred and twenty (120) days from the filing of the application, unless the time be extended by the Commissioner for good cause shown, which shall be stated in writing and filed as a part of the record of the proceedings, but such extension shall not exceed sixty (60) days. The report shall state the names and the Post-Office addresses of all persons in possession of the land described in the application, and of all persons found by the surveyor to have or claim any interest therein. Any interested party may at his own expense cause any surveying to be done as he deems desirable.

As soon as the total expense properly charged against the deposit has been determined, the Commissioner shall render a complete statement to applicant, accompanied by payment of the balance, if any, shown to be remaining in such fund.

Within sixty (60) days after the surveyor has made his report as provided herein, a hearing may be held before the Commissioner on the date fixed in a notice which he shall give to all persons thought to



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

be interested parties and to all persons shown by the record of the proceeding to be interested parties, including the Attorney General, to determine whether there is a vacancy. Such notice shall be deposited in the Post Office at Austin, at least ten (10) days prior to the date fixed for such hearing. At the hearing, the State and each interested party, whether or not he received notice, shall have a right to be heard.

(d) If the Commissioner should decide that the area so alleged to be a vacancy is not vacant, then the Commissioner shall so endorse said application and file it with his finding, and shall promptly notify the applicant of his finding by registered mail, and shall file all reports and papers received in connection with said application, and then shall take no further steps with respect to same unless the existence of the alleged vacant area shall have been determined by a Court of competent jurisdiction. Thereupon, the applicant's application and all preference rights acquired thereby, to buy, or lease, such alleged vacancy shall become null and void, unless within a period of ninety (90) days after the mailing of such notice the applicant shall file suit in the District Court of the county wherein any part of such land is located, for the purpose of litigating the question of the existence of a vacant unsurveyed area.

(e) If it shall appear to the Commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the State, the Commissioner shall give prompt notice of such finding to the applicant and to all those who have been previously identified as interested parties, and thereafter, subject to the further provisions hereof, such applicant shall have a right for one hundred and twenty (120) days to purchase or lease such portion of said land as is vacant at the price fixed by the School Land Board as hereinafter provided, with the royalty reservation provided hereinabove in subsection (b); provided that no such award shall be made by the Commissioner except after a hearing, and provided further that no presumption shall obtain in any suit involving the existence of a vacancy, as a result of the action of the Commissioner in this respect.

(f) Any good faith claimant who ascertains that a vacancy exists or that a claimed vacancy may exist, or who has been notified by the Commissioner that a vacancy has been found to exist upon lands claimed by him shall, at any time, until ninety (90) days after a decision of the Commissioner declaring the existence of a vacancy, have a preference right to purchase or lease same by applying in writing to the Commissioner for such purchase or lease, and by furnishing such proof as may be satisfactory to the Commissioner that he is a good faith claimant. Such good faith claimant shall then be entitled to purchase or lease such portion of said land as is vacant, at the price fixed by the School Land Board, subject to the royalty reservations herein provided, effective as of the date such application is filed.

Where there is no valid and subsisting prior filing by an applicant covering the alleged vacant area upon the date of the filing of a good faith claimant's application to purchase or lease, such application shall be accompanied by a filing fee of One Dollar (\$1), by a written report of a surveyor licensed by the State, or the County Surveyor of the county in which the land or a part thereof is situated, with field notes describing the land and the lines and corners so surveyed, together with a plat showing the results of such survey, and by such proof as may be satisfactory to the Commissioner that he is a good faith claimant. Such good faith claimant may, however, if he so desires, file his application to purchase or lease, and within one hundred and twenty (120) days from the date of filing with the Commissioner, cause a survey of the al-

leged vacancy to be made, and file the written report, field notes, and plat in the General Land Office, together with the proof that he is a good faith claimant. If it shall appear to the Commissioner that the alleged vacancy is not in conflict with the land previously titled, awarded or sold by the State, the Commissioner shall grant such application under the provisions of this Act; provided, however, that prior to granting the application, the Commissioner may have a hearing at which any interested persons may appear.

The application by a good faith claimant shall not be used or considered, in any way, as an admission on his part that a vacancy exists.

Any good faith claimant shall also have a preference right until ninety (90) days after final judicial determination of the existence of a vacancy to purchase the land alleged or adjudicated to be vacant; provided, however, that if such good faith claimant shall not have exercised his preference right until after ninety (90) days after the decision of the Commissioner determining the existence of the vacancy, then the sale made to the good faith claimant shall be subject to a reservation in favor of the State of a free one-eighth ( $1/8$ ) royalty of all oil, gas, sulphur and other minerals, and subject to any lease made or to be made by the State to applicant, if any, of not more than thirteen-sixteenths ( $13/16$ ) mineral interest as in this Act provided. If the Commissioner has theretofore executed a mineral lease on a larger portion of the minerals under said land, then such lease shall be amended to cover only thirteen-sixteenths ( $13/16$ ) of the minerals so as to conform with the preference rights hereby given to good faith claimants.

Any good faith claimant of a vacant or unsurveyed tract of land shall have ninety (90) days after the sale or lease by the Commissioner of said tract to institute suit to set aside the sale or lease of said tract of land. If said suit be not instituted by the good faith claimant within said ninety-day period, he shall lose all preference rights to buy or lease said land.

If the Commissioner has failed to determine whether or not there is a good faith claimant, or if his decision is questioned by applicant or one asserting to be a good faith claimant, then such issue shall be determined in any suit brought under this Act to determine the existence of the alleged vacancy.

Provided the good faith claimant shall pay back to the applicant the amount of expenses incurred in determining the existence of the vacancy, as provided for in Section 1, Subsection (c), except the filing fees, within ninety (90) days after the Commissioner has declared the vacancy to exist, or he shall lose all preference rights to lease or buy said land.

(g) The purchase by any good faith claimant under such preferential right shall inure distributively to the benefit of all owners holding title under him or an interest in the title under which he claims to be a good faith claimant, provided that such co-owners or lessees shall accept the provisions hereinafter set out and contribute their proportionate part of the royalty reserved to the State and the royalty awarded to the applicant. Such reservation shall be deducted distributively and proportionately from the mineral interest of each owner, including mineral leases, if the area should be under mineral lease. As a condition to the benefits conferred by this law, it is expressly provided that such claimants receiving patents or awards, or for whose benefit such patents or awards are received, shall recognize the proportionate interests of other owners benefiting by the award of preference rights hereby. The consideration for such purchase shall be determined by the Commissioner without considering the potential mineral value or any improvements

thereon, but shall not be less than One Dollar (\$1) per acre, and the State shall retain its right to recover from the party or parties liable therefor the market value, when produced, of all oil, gas, sulphur, and other minerals that may have been produced from such area prior to the effective date of the said patent or award, but against such liability there shall be allowed as an offset to the operator the actual cost of developing and producing the same. Provided that no mineral lease executed by the good faith claimant previous to the filing of the vacancy claim shall give the lessee any interest in, or to, any vacancy.

No title to either land or mineral interest in land acquired from the State under preference right shall ever be held to pass as an after-acquired title by reason of any covenant of general warranty, description, or other provision, contained in any conveyance executed prior to the date of award under such preference.

(h) Where there is a valid, subsisting prior filing by an applicant upon the date of the filing of a good faith claimant's application to purchase under preferential right, and where the good faith claimant shall have exercised his preference right to purchase within ninety (90) days after a decision of the Commissioner under the provisions of this Act, then in such patent as shall be issued to good faith claimant, there shall be added to the free royalty interest reserved to the State and deducted proportionately from good faith claimant's award, as provided in paragraph (g), a free royalty of one-sixteenth of all oil, gas, sulphur, and other minerals which may be produced from such land, which royalty shall be awarded by the State to the applicant. But, if the good faith claimant shall not have exercised his preferential right to purchase within ninety (90) days after a decision of Commissioner under the provisions of this Act, then the applicant shall be awarded an oil, gas and mineral lease on not more than seven-eighths of the minerals for not less than One Dollar (\$1) per acre, and for a five-year primary term, subject to such other consideration and terms as may be fixed by School Land Board, and subject to the preference right of a good faith claimant until ninety (90) days after final judicial determination under subsection (f) hereof. Should there be no good faith claimant, or should no good faith claimant exercise his preferential right within the time allowed, then the applicant shall be entitled to buy or lease accordingly, as he may have applied, the vacancy applied for by him and found to exist, for a consideration to be fixed by the School Land Board as hereinafter provided, but without consideration of potential mineral value.

(i) Any application made under prior laws to purchase or lease unsurveyed school land which is on file in the office of the Commissioner or with any county surveyor and which has not been granted upon the effective date of this Act, shall become null, void, and of no further effect unless there is then pending a suit, or suits, involving the question of whether the land so affected or a part thereof is vacant, or unless the Commissioner shall within nine (9) months after the effective date hereof grant said application, or unless the applicant shall within sixty (60) days after the end of such nine-months period, file an action in the District Court, for the purpose of litigating the question of the existence of a vacant unsurveyed area.

(j) Any person, firm, or corporation aggrieved by any action taken by the Commissioner under the provisions of this Act, or with reference to any application to purchase or lease vacancies, may institute suit in the District Court of the county where any part of the land is situated, but not elsewhere, and there try the issues of boundary, title, and ownership of any alleged vacancy involved, as well as the is-

sues of the preference rights of such person, firm, or corporation, as herein provided. The plaintiff in such suit shall within thirty (30) days after the filing thereof cause a certified copy of the original petition therein to be served by any sheriff or constable of Travis County upon the Attorney General of Texas and the Commissioner, and cause such officer's return showing said service to be filed with the papers in said cause. Whether the Attorney General answers or intervenes in said cause or institutes suit in the first instance, following the filing of such application, the venue of all such suits shall be in the county where such land, or any part thereof, is located. When such litigation shall have been prosecuted to a final judgment, said judgment shall be binding upon the State of Texas. It shall be mandatory for the Attorney General to intervene in behalf of the State in such cases. As amended Acts 1939, 46th Leg., p. 465, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1939 amends section 8 of this article.

Section 3 read as follows: "Nothing in this Act shall affect or apply to filings or applications which are involved in pending litigation upon the effective date hereof, nor to the title to the land involved in any suit to which the State is now a party, nor to any pending suit. Nothing in this Act shall apply to any application on file at the effective date of this Act, and such applications may be prosecuted under the law in effect at the date such applications were originally filed, except that suit thereon shall be filed (if not already filed) within the time limits fixed in subsection (i) hereof."

Section 4 is published as article 5421c—1; section 4-a as article 5421c—2; section 5 is article 5421c—3.

Section 6 repeals all conflicting laws and parts of laws.

Section 7 read as follows: "If any section, subsection, or portion of this Act shall be held unconstitutional or invalid, then it is expressly here shown as the intention of the Legislature that each and every part of this Act, and every subsection hereof, would have been enacted without the enactment of all other parts, or subsections hereof, so that the invalidation of any portion of this Act shall not affect the validity of the remaining portion hereof."

Section 8 declared an emergency and provided that the Act should take effect from and after its passage.

#### **Lands subject to lease; rights and powers of surface owner**

Sec. 8. All islands, salt water lakes, bays, inlets, marshes, and reefs owned by the State within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsold public free school land, both surveyed and unsurveyed, shall be subject to lease by the Commissioner to any person, firm, or corporation for the production of minerals, except gold, silver, platinum, cinnabar, and other metals, that may be therein or thereunder, in accordance with the provisions of Chapter 271, Acts of the Forty-second Legislature, as amended,<sup>1</sup> and Subdivision 2, Chapter 4, Title 86, Revised Civil Statutes of Texas of 1925,<sup>2</sup> relating to leasing public areas, in so far as same is not in conflict herewith. Provided, however, that nothing in this Act shall be construed as removing from or interfering with the rights and powers of the surface owner of land sold or to be hereafter sold by the State, with a mineral reservation, to act as agent of the State in making and executing mineral leases covering and affecting such lands, but the authority of such surface owner shall remain the same as provided by law, and is in no wise abridged, modified or removed by this Act. As amended Acts 1939, 46th Leg., p. 465, § 2.

<sup>1</sup> This article.

<sup>2</sup> Articles 5353-5366.

Effective 90 days after June 21, 1939, date of adjournment.

Emergency section. See note under section 6, ante.

#### **Art. 5421c—1. Excess acreage where tract of land titled or patented**

In all cases where the area of a tract of land titled or patented exceeds the quantity called for in the title or patent, and where, under

the existing law the title to all or any part thereof shall or may be affected by the existence of such excess, then any person owning such survey or having an interest therein may pay for such excess acreage at such price as the empowered authority may fix. Any person owning any interest in a titled or patented survey in which excess acreage exists who desires to pay for such excess acreage, shall file with the Land Commissioner a request for an appraisalment of the land with corrected field notes in the form now provided by law, together with a statement of the facts pertaining to his right to purchase, which statement shall be sworn to, and such other evidence of his right to purchase as the Commissioner may require. Should it appear that such excess actually exists and that the applicant is entitled to the benefits of the law, then the Commissioner shall execute a deed of acquittance covering such land in the name of the original patentee or his assignees with such reservation of minerals or with no mineral reservation, accordingly as may have been the case when the survey was titled or patented. Such transfer shall inure distributively to the benefit of the true and lawful owners of the survey in proportion to their holdings. Acts 1939, 46th Leg., p. 465, § 4.

Effective 90 days after June 21, 1939,  
date of adjournment.

Emergency section. See note under article 5421c, § 6, ante.

#### Art. 5421c—2. Mineral leases under Relinquishment Act

No mineral lease executed by an owner or owners of land or minerals under what is commonly known as the Relinquishment Act shall be effective until a certified copy of such lease is filed in the Land Office. No such lease executed after the effective date hereof shall be binding upon the State unless it recites the actual and true consideration paid or promised therefor. Acts 1939, 46th Leg., p. 465, § 4-a.

Effective 90 days after June 21, 1939,  
date of adjournment.

Emergency section. See note under article 5421c, § 6, ante.

#### Art. 5421c—3. Control and disposition of lands set apart for permanent free school fund and asylum funds and mineral estate within tidewater limits; dedication of mineral estate to permanent school fund; School Land Board, creation and duties; Board of Mineral Development abolished

1. All lands set apart for the permanent free school fund and the several asylum funds by the Constitution and the laws of this State and the mineral estate in river beds and channels, and the mineral estate in all areas within tidewater limits including islands, lakes, bays, and the bed of the sea, belonging to the State of Texas, are subject to control and disposition in accordance with the provisions of this Section and other pertinent provisions of this Act and other laws not in conflict herewith; provided, however, that the provisions of this Act shall not apply to those lands awarded to the State of Texas by decree of the Supreme Court of the United States on March 17, 1930, in Cause entitled: The State of Oklahoma vs. The State of Texas, the United States of America, Intervenor,<sup>1</sup> but said lands shall be sold and disposed of in accordance with the provisions of Chapter 185, Acts of the Regular Session of the Forty-second Legislature.<sup>2</sup>

2. The mineral estate in river beds and channels and in all areas within tidewater limits, including islands, lakes, bays, and the bed of the sea, belonging to the State of Texas, are hereby set apart and dedicated to the permanent school fund.

3. There is hereby created a board to be known as the School Land Board, and to be composed of three (3) members, namely: the Commissioner of the General Land Office, who shall be chairman, the Governor and the Attorney General.

4. The duties of the School Land Board shall be to set all dates for the leasing and the sale of surveyed lands, and to determine the prices at which any land, whether surveyed or unsurveyed, shall be leased or sold, and to perform any other duties that may be imposed upon them by law. All such lands shall be sold and leased subject to the terms and conditions provided by law, except that no land shall be appraised at a less price than Two Dollars (\$2) per acre; provided, however, that lands lying and being situated west of the Pecos River may be appraised at a price not less than One Dollar (\$1) per acre.

5. The School Land Board shall meet on the first and third Tuesdays of each month in the General Land Office, where its sessions shall be held and continued until its docket is cleared, subject to recesses at the discretion of the Board. The Board shall select a secretary who shall be nominated by the Commissioner of the General Land Office and approved by a majority of the Board. The Commissioner of the General Land Office is authorized to employ other employees which may be necessary for the discharge of the duties of the Board, and particularly is authorized to employ a geologist and mineralogist, who shall keep informed with reference to the minerals on public school lands and all activities under pending applications and previous leases and sales, and shall report to the Board all information obtained with reference thereto. The employees of the Board shall be deemed to be employees of the General Land Office, and all civil and criminal laws regulating the conduct and relations of the employees of the General Land Office shall apply in all things to the employees of the Board.

6. The School Land Board shall keep a record of its proceedings to be called its minutes which shall include a docket on which the secretary shall enter all matters to be considered by the Board, the minutes and docket to be subject to inspection by any citizen of Texas desiring to make an examination thereof on payment of such fees as may be prescribed by law for the examination of other Land Office records, the examination to be in all cases in the presence of the secretary of the Board or some clerk designated for that purpose as prescribed by law. All records and proceedings of the Board shall be records and archives of the General Land Office.

7. The School Land Board, as soon after the passage of this Act as may be practicable, shall adopt rules of procedure and regulation for the sale and leasing of areas included herein not inconsistent with this Act and other laws on the subject for the sale and lease of school and asylum lands and the lease of the mineral estate in river beds and channels and islands, lakes and bays within tidewater limits and the bed of the sea, belonging to the State of Texas.

8. The description of public free school land offered for sale or lease shall be in accord with such descriptions as may be found in the School Land Registry of the General Land Office and shall be entered on the docket; and when applications to purchase either the land or the lease, as the case may be, are filed, the name of the applicant and the amount of his bid shall also be entered on the docket. The minutes shall show the fact of acceptance of a bid or the rejection of a bid and the approval of the minutes will constitute the approval of the act of acceptance or the act of rejection, as the case may be.

9. It shall be the duty of the Commissioner of the General Land Office to furnish the Board from time to time a list of all lands subject to the provisions of this Section.

10. All awards or leases shall be issued by the Commissioner of the General Land Office in accordance with the minutes as approved by the School Land Board.

11. It shall be the duty of the School Land Board to advise the Commissioner in all matters submitted to it for such purpose.

12. The Board shall insert, in at least four (4) daily newspapers in at least three (3) issues of each, thirty (30) days in advance of a sale date, which shall be the first Tuesday in any month, an advertisement to the effect that leases or land will be offered for sale on a certain date and that lists describing the land may be had at the General Land Office.

13. The School Land Board shall have the right to reject any and all bids, but unless the Board elects to reject any and all bids, it shall be required to accept the best bid submitted.

14. (a) All functions now vested by law in the Board of Mineral Development created by Chapter 40, Acts of the Second Called Session of the Forty-second Legislature,<sup>3</sup> are hereby transferred to and vested in the School Land Board, subject to the same powers, rights, duties, restrictions and limitations imposed by law upon the Board of Mineral Development. The Board of Mineral Development is hereby abolished.

(b) Upon the taking effect of this Act, all books, papers, records, property and pending business theretofore made, used, acquired or conducted by the Board of Mineral Development in the exercise of its functions hereby transferred, shall be transferred to and vested in the School Land Board.

(c) All officers and employees of the Board of Mineral Development may be transferred to the School Land Board, and shall perform the duties of the Board as directed by the Commissioner of the General Land Office, subject to the conditions hereinabove set forth. The Commissioner of the General Land Office shall have the power to eliminate unnecessary positions, to transfer officers and employees between positions, and to change the duties, titles and compensation of the existing offices and positions necessary to effect an efficient administration of the Board.

(d) The balances of the appropriations heretofore made to the credit of the General Land Office for the use of the Board of Mineral Development are hereby made available for expenditure by the Commissioner of the General Land Office in the exercise of such functions hereby transferred to and vested in the School Land Board.

15. The sum of Ten Thousand Dollars (\$10,000), or so much thereof as may be necessary, is hereby appropriated annually out of any funds in the State Treasury, not otherwise appropriated, to pay the salaries and expenses of all persons employed or appointed by the Board as herein provided, and all other expenses necessary for the proper discharge of the duties of the Board. The compensation of all persons employed by the Board shall be in line with salaries paid other State officials and employees holding similar positions and doing similar work. Acts 1939, 46th Leg., p. 465, § 5.

<sup>1</sup> See *State of Oklahoma v. State of Texas*, 50 S.Ct. 247, 281 U.S. 109, 74 L.Ed. 731, 1122.

<sup>2</sup> Article 5330a.

<sup>3</sup> Article 5421c, § 8a.

Effective 90 days after June 21, 1939, date of adjournment.

Emergency section. See note under article 5421c, § 6, ante.

**Art. 5421g. Public free school lands withdrawn from sale or lease**

Section 1. That all of the public free school lands heretofore authorized by any law of this State to be sold or leased, are hereby withdrawn from sale or lease from the effective date of this Act until after the expiration of ninety (90) days from the adjournment of the Regular Session of this Legislature.

Sec. 2. The withdrawal of said public free school lands from sale or lease shall not apply, however, to applications to purchase or lease filed with the Commissioner of the General Land Office prior to the effective date of this Act or to applications involved in litigation now pending.

Sec. 3. All laws and parts of laws in conflict with this Act are hereby suspended until after the expiration of ninety (90) days after the adjournment of the Regular Session of this Legislature. Acts 1939, 46th Leg., p. 463.

Effective Feb. 7, 1939.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to withdraw from sale or lease all public free school lands heretofore authorized by any law of this State to be sold or leased; providing that such with-

drawal shall not apply to applications to purchase or lease filed prior to the effective date of this Act or to applications involved in litigation now pending; suspending all laws in conflict until ninety (90) days after adjournment of the Regular Session of the Forty-sixth Legislature; and declaring an emergency. Acts 1939, 46th Leg., p. 463.

**Art. 5421h—1. Functions, officers, employees, records, etc., of State Reclamation Engineer transferred to General Land Office; office abolished**

Section 1. All functions now vested by law in the State Reclamation Engineer are hereby transferred to and vested in the Commissioner of the General Land Office. Every act performed in the exercise of such functions by the Commissioner of the General Land Office shall be deemed to have the same force and effect as if done by the State Reclamation Engineer.

Sec. 2. Upon the taking effect of this Act, all books, papers, records, property and pending business theretofore made, used, acquired or conducted by the State Reclamation Engineer in the exercise of functions hereby transferred shall be transferred to and vested in the Commissioner of the General Land Office.

Sec. 3. All officers and employees of the State Reclamation Department shall be transferred to the General Land Office and shall perform such duties as may be directed by the Commissioner of the General Land Office, who shall have the power to eliminate unnecessary positions, to transfer officers and employees between positions, and to change the duties, titles and compensation of existing offices and positions necessary to effect an efficient administration of the office.

Sec. 4. The balances of appropriations to the credit of the State Reclamation Department available for expenditure in the exercise of such functions shall be transferred to the credit of the General Land Office for expenditure by the Commissioner of the General Land Office in the exercise of such functions in accordance with law.

Sec. 5. The office of State Reclamation Engineer, authorized under the provisions of Chapter 5, Title 128, Revised Civil Statutes of Texas, 1925, is hereby abolished. Acts 1939, 46th Leg., p. 704.

Effective April 25, 1939.

Section 6 of the act of 1939 declared an

emergency and provided that the act should take effect from and after its passage.



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Title of Act:**

An Act abolishing the office of State Reclamation Engineer; transferring to and vesting the functions in the Commissioner of the General Land Office; providing for the transfer of all officers and employees,

the balances of appropriations, and all books, papers, records, property and pending business of the State Reclamation Department to the General Land Office, and declaring an emergency. Acts 1939, 46th Leg., p. 704.

## TITLE 87—LEGISLATURE

**Art.**

5429a. Witnesses before legislature or committees thereof; oaths of witnesses [New].

### Art. 5429a. Witnesses before legislature or committees thereof; oaths of witnesses

Section 1. The President of the Senate, the Speaker of the House of Representatives, or a chairman of a Committee of the Whole, or of any Committee of either House of the Legislature, is empowered to administer oaths to witnesses in any case under their examination. Any member of either House of the Legislature may administer oaths to witnesses in any matter pending in either House of the Legislature of which he is a member, or any Committee thereof.

#### Refusal of witnesses to testify

Sec. 2. Every person who having been summoned as a witness by the authority of either House of the Legislature, to give testimony or to produce papers upon any matter under inquiry before either House, or any Committee of either House of the Legislature, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than One Thousand (\$1,000.00) Dollars nor less than One Hundred (\$100.00) Dollars, and imprisonment in jail for not less than thirty days nor more than twelve months.

#### Privilege of witnesses

Sec. 3. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of the Legislature, or by any Committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before either House or in the Committee of either House of the Legislature or Joint Committee of both Houses, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or the production of papers would incriminate him, or tend to incriminate him, shall nevertheless be required to testify and to produce papers, but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary or otherwise.

#### Witnesses failing to testify

Sec. 4. Whenever a witness summoned as mentioned in Section 2 hereof shall fail to testify, and the facts are reported to either House of

the Legislature, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or the House of Representatives to the District Attorney of Travis County, Texas, whose duty it shall be to bring the matter before the grand jury for their action.

**Witnesses failing to testify or produce records**

Sec. 5. Whenever a witness summoned as mentioned in Section 2 hereof shall fail to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House or any Committee or Sub-Committee of either House of the Legislature, and the fact of such failure or failures is reported to either House while the Legislature is in session, or when the Legislature is not in session, a statement of facts constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the District Attorney of Travis County, Texas, whose duty it shall be to bring the matter before the grand jury for its action. Acts 1937, 45th Leg., p. 67, ch. 41.

Effective March 12, 1937.

Section 6 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the administration of oaths to witnesses by the President of the Senate or the Speaker of the House of Representatives, Chairman of a Committee of the Whole or of any Committee of either or both Houses of the Legislature, or any member thereof, by any member of either House in a matter pending before either House of which he is a member, or any Committee thereof; refusal of any witness to testify to constitute a misdemeanor, and providing a penalty; pro-

viding for privilege of witnesses; providing for certification of failure to testify to the District Attorney of Travis County, Texas by the chairman of any Investigating Committee appointed by either House of the Legislature or Joint Committee thereof; and providing for the presentation of such certification to the grand jury; providing for punishment for failure to produce books, papers, records or documents required by either House of the Legislature or any Committee thereof or Joint Committee thereof; providing for punishment when neither House is in session; and declaring an emergency. [Acts 1937, 45th Leg., p. 67, ch. 41.]

## TITLE 90—LIENS

### CHAPTER ONE—JUDGMENT LIENS

#### Art. 5449. 5516-7 Lien of judgment

When any judgment has been so recorded and indexed, whether it be the first or a subsequent abstract of said judgment, it shall, from the date of such record and index, if said judgment is not then dormant, operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire, situated in said county. Said lien shall continue for ten (10) years from the date of such record and index, except that if during said ten-year period the judgment becomes dormant said lien shall thereupon cease to exist, provided, that the lien of any judgment so recorded and indexed prior to the effective date of this Act, if then valid, shall continue for ten (10) years from the effective date of this Act, except that if during said ten (10) years the

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

judgment becomes dormant said lien shall thereupon cease to exist. [As amended Acts 1937, 45th Leg., p. 553, ch. 273, § 1.]

Amendment of 1937, effective May 5, 1937. the act should take effect from and after  
Section 2 of the amendatory Act of 1937 its passage.  
declared an emergency and provided that

## CHAPTER FIVE—FARM, FACTORY AND STORE OPERATIVES

### Art. 5483. [5644] Lien prescribed

Whenever any clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarryman, common laborer, farm hand, male or female, may labor or perform any service in any office, store, hotel, rooming house, boarding house, restaurant, cafe, shop, factory, mine, quarry or mill of any character, or perform any service in the cutting, preparation, hauling, handling, or transporting to any mill or other point for sale, manufacture or other disposition, logs or timber, or perform any service upon any wagon, cart, tram, or railroad, or other means or methods of transporting such logs or timber, and in the construction or maintenance of such tram or railroad, constructed or used for the transportation of logs or timber to or for such mills to its owner or operator, or to points for sale, shipment or other disposition, or any farm hands, under or by virtue of any contract or agreement, written or verbal, with any person, employer, firm or corporation, or his, her, or their agent, receiver or trustee, in order to secure the payment of the amount due or owing under such contract or agreement, written or verbal, the hereinbefore mentioned employees shall have a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels, wagons, carts, tram roads, railroads, rolling stock and appurtenances, or thing or things of value of whatsoever character that may be created in whole or in part by the labor or that may be used or useful by such person or persons or necessarily connected with the performance of such labor or service, which may be owned by or in the possession or under the control of the aforesaid employer, person, firm, corporation, or his or their agent or agents, receiver or receivers, trustee or trustees; provided, that the lien herein given to a farm hand shall be subordinate to the landlord's lien provided by law. As amended, Acts 1937, 45th Leg., p. 1257, ch. 473, § 1.

Effective June 9, 1937. the act should take effect from and after  
Section 3 of the amendatory Act of 1937 its passage.  
declared an emergency and provided that

### Art. 5486. [5645] Liens, how fixed

Whenever any person, employer, firm, corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, shall fail or refuse to make payments as hereinafter prescribed in this law, the said clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, farm hand, artisan, craftsman, operative, mechanic, quarryman, or laborer, who shall have performed service of any character, shall make or have made duplicate accounts of such service, with amount due him or her for the same, and present, or have presented, to aforesaid employer, person, firm or corporation, his, her, or their agent or agents, receiver or receivers, trustee or trustees, one of the aforesaid duplicate accounts within thirty (30) days after the said indebtedness shall have accrued. The other of the said duplicate accounts shall, within the time hereinbefore prescribed, be filed with the county clerk of the county in

which said service was rendered, and shall be recorded by the county clerk in a book kept for that purpose. The party or parties presenting the aforesaid account shall make affidavit as to the correctness of the same. A compliance with the foregoing requirements in this Article shall be necessary to fix and preserve the lien given under this law; and the liens of different persons shall take precedence in the order in which they are filed; provided, that all persons claiming the benefit of this law shall have six months within which to bring suit to foreclose the aforesaid lien; and provided, further, that a substantial compliance with the provisions of this Article shall be deemed sufficient diligence to fix and secure the lien hereinbefore given; provided, that any purchaser of such products from the owner thereof shall acquire a good title thereto, unless he has at the time of the purchase actual or constructive notice of the claim of such lienholder upon such products, said constructive notice to be given by record of such claim, as provided for in this law, or by suit filed. As amended, Acts 1937, 45th Leg., p. 1257, ch. 473, § 2.

Effective June 9, 1937.

## CHAPTER SEVEN—OTHER LIENS

Art.

5506b. Lien for repairing, altering, dyeing, cleaning, or pressing wearing apparel [New].

Art. 5506b. Lien for repairing, altering, dyeing, cleaning, or pressing, wearing apparel

Section 1. Whenever any article of wearing apparel or garment shall be left with any person, firm, or corporation for the purpose of being repaired, altered, dyed, cleaned, or pressed, or laundered, such person, firm, or corporation is authorized to retain possession of said wearing apparel or garment until the amount due on same for repairing, altering, dyeing, cleaning, pressing, or laundering by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said person, firm, or corporation shall retain possession of such wearing apparel or garment until all reasonable, customary, and usual compensation shall be paid in full.

### Sale of property

Sec. 2. When possession of any of the articles of wearing apparel or garments embraced in the preceding Article has continued for sixty (60) days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said wearing apparel or garments to notify the owner, if in the State and his residence be known, to come forward and pay the charges due, and on his failure within ten (10) days after such notice has been given him to pay said charges, the persons so holding said wearing apparel or garments, after twenty (20) days notice, are authorized to sell said wearing apparel and garments at public or private sale and apply the proceeds to the payment of said charges, including a reasonable cost incurred in holding said sale, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the State or is unknown, the person holding said wearing apparel or garments shall not be required to give such notice before proceeding to sell.

**Unclaimed proceeds**

Sec. 3. If the person who is legally entitled to receive the balance mentioned in this Chapter is not known, or has removed from the State or from the county in which such repairing, altering, dyeing, cleaning, pressing, or laundering was done, or such wearing apparel or garments were so held, the person, firm, or corporation so holding said property shall pay the balance to the County Treasurer of the county in which said articles of wearing apparel or garments are held and take his receipt therefor. Whenever such balance shall remain in the possession of the County Treasurer for the period of two (2) years unclaimed by the party legally entitled to same, such balance shall become a part of the General Fund of the county in which the articles of wearing apparel or garments were sold. Acts 1937, 45th Leg., p. 1138, ch. 459.

Effective June 8, 1937.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to provide liens for services rendered by persons, firms, and corporations

with whom articles of wearing apparel and garments have been placed to be repaired, altered, dyed, cleaned, or pressed, or laundered and authorizing the sale thereof to pay charges for such services, and for the disposition of proceeds of such sales; and declaring an emergency. [Acts 1937, 45th Leg., p. 1138, ch. 459.]

**TITLE 91—LIMITATIONS**

**1. LIMITATIONS OF ACTIONS FOR LANDS**

Art. 5517. [5683] [3351] [3200] Right of the State

The right of the State shall not be barred by any of the provisions of this Title, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, alley, sidewalk, or grounds which belong to any town, city, or county, or which have been donated or dedicated for public use to any such town, city, or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city, or county in this State. As amended Acts 1939, 46th Leg., p. 485, § 1.

Effective 90 days after June 21, 1939,  
date of adjournment.

Section 2 of the amendatory act of 1939.

declared an emergency and provided that the act should take effect from and after its passage.

**TITLE 92—LUNACY—JUDICIAL PROCEEDINGS IN CASES OF**

Art.

5561a. Apprehension, arrest, and trial of persons not charged with criminal offense; information; warrant; notice of hearing [New].

Art. 5550. [153] Cause docketed, etc.

The cause shall be docketed on the probate docket of the Court in the name of the State of Texas as plaintiff, and the person charged to be insane as defendant. The County Attorney or the District Attorney in counties having no County Attorney, shall appear and represent the State on the hearing, and the defendant shall also be entitled to counsel; and in proper cases the County Judge may appoint counsel for that purpose.

In cases in which the County Judge may deem it necessary to appoint counsel for the defendant, such appointment shall be noted upon the

docket giving the name of the attorney so appointed, and in cases in which the County Judge deems it necessary a fee may be allowed to counsel for the defendant in such sum as may be fixed by the County Judge, and noted on the docket, in an amount not to exceed Five Dollars (\$5.00), to be taxed as costs in the case. [As amended Acts 1937, 45th Leg., p. 1048, ch. 445, § 1.]

Amendment of 1937, effective June 8, 1937.

Section 2 repeals all conflicting laws and

parts of laws. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 5559. Record of proceedings and notice

Only the judgments which are rendered in lunacy proceedings by the County Court, or by the Judge thereof, shall be required to be entered in the minutes of such Court by the County Clerk, and such Clerk shall not be required to enter any other proceedings in said minutes. Before any patient is sent to any asylum or is delivered to the United States for care and treatment as provided by Articles 5554 and 5557 of the Revised Civil Statutes of Texas, the County Judge shall cause a complete transcript of the proceedings to be made up and certified by the Clerk of the County Court under the seal of said Court, which transcript shall be forwarded by said Clerk to the superintendent of the asylum or to the medical officer in charge of the United States Government hospital to which such patient may be sent. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1969, ch. 57, § 1.]

Effective 90 days after Oct. 26, 1937, date of adjournment.

Section 2 of the amendatory act of 1937 repeals all conflicting laws and parts of

laws; section 3 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 5561a. Apprehension, arrest, and trial of persons not charged with criminal offense; information; warrant; notice of hearing

Section 1. If information in writing under oath be given to any county judge that any person in his county, not charged with a criminal offense, is a person of unsound mind, and that the welfare of either such person or any other person or persons requires that he be placed under restraint, and such county judge shall believe such information to be true, he shall forthwith issue a warrant for the apprehension of such person, or, if such like information be given to any justice of the peace in such county, said justice may issue a warrant for the apprehension of said person, making said complaint and warrant returnable to the county court of said county, and said county judge in either event shall fix a time and place for the hearing and determination of the matter, either in term time or in vacation, which place shall be either at the court house of the county, or at the residence of the person named, or at any other place in the county, as the county judge may deem best for such hearing. Notice of the time, place and purpose of such hearing shall be served upon the person charged, such notice to be under the hand and seal of the county clerk of said county, and served and returned by the sheriff or a constable of such county, and the return to state the time and place of service. Such notice shall be served not less than three days prior to the day of hearing.

#### Warrant, form and requisites of

Sec. 2. The warrant provided for herein shall run in the name of "The State of Texas", and shall be directed to the sheriff or any constable of the county, and the officer receiving same shall forthwith take into custody the person named therein, and at the designated time and place

shall have him and the return of said warrant before the county judge for examination and trial.

#### **Jury summoned**

Sec. 3. At the time of issuing the warrant mentioned in the preceding sections, or upon receipt of the complaint from the justice of the peace, the county judge shall issue an order to the sheriff or any constable directing him to summon a jury of six competent jurors of the county to be and appear before such judge at the time and place designated in said order for the purpose of hearing and determining the issues to be submitted in said matter.

#### **Restoration of sanity; procedure; effect of findings; costs**

Sec. 4. Upon the filing in the county court in which a person was convicted or in the county court of the county in which a person is located at the time he is alleged to have had his right mind restored, information in writing and under oath made by a physician legally licensed to practice medicine in Texas, that a person not charged with a criminal offense, who has been adjudged to be of unsound mind, has been restored to his right mind, the judge of said court shall forthwith, either in term time or vacation, order said person brought before him by the sheriff of the county and if said issue be in doubt said judge shall cause a jury to be summoned and impaneled in the same manner as is provided for in Section 3 hereof and shall proceed to the trial of said issue, or if there appears no doubt as to said issue, said judge may try the same without the intervention of a jury, and if said person shall be found to be of sound mind, a judgment shall be entered upon the minutes of said court reciting and adjudging such fact and said person shall, if then under restraint, be immediately discharged, or in the event he shall be found to be still of unsound mind, he shall be returned by the county court to the place of restraint from which he had been previously ordered, and the original order of commitment shall continue in full force and effect. All costs of proceedings of restoration shall be paid by the county.

#### **Provisions cumulative**

Sec. 5. This Act shall be cumulative of Articles 5550 to 5561 inclusive of Title 92, Revised Civil Statutes of the State of Texas, 1925 revision.

#### **Validation of proceedings, judgments, and orders**

Sec. 6. All actions, proceedings, judgments and orders made and entered by any probate or county court of this State pursuant to which any person has been adjudged insane and committed to a state hospital for the insane, are hereby validated and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

#### **Contracts and conveyances by persons subsequently adjudged incompetent**

Sec. 7. A contract valid on its face, made with, or likewise a conveyance made by a person, who at the time has not been legally adjudged to be of unsound mind, or otherwise incompetent, and who is subsequently shown to have been insane, or otherwise incompetent, at the time of the execution of such contract or conveyance, shall not be set aside or avoided where any such contract or conveyance has been executed in good faith in whole or in part, and was entered into in good faith and without fraud or imposition and for a valuable consideration, without notice of such in-

firmity, unless the parties to such contract or conveyance shall have been first equitably restored to their original position. The provisions of this Article shall not apply in cases where one of the parties to any such contract or conveyance is insane, and has been so adjudged by a court of competent jurisdiction prior to the date of such contract or conveyance.

**Pending proceedings or actions unaffected; partial invalidity**

Sec. 8. This Act shall not affect any proceedings or action pending in any court, of competent jurisdiction, on the effective date hereof and any such pending proceedings or action shall be determined in accordance with pre-existing law.

**Unconstitutionality**

Sec. 9. In the event any section, subdivision, paragraph, or sentence of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding any invalid portions. [Acts 1937, 45th Leg., p. 1049, ch. 446.]

Effective 90 days after May 22, 1937, date of adjournment.

Section 10 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the apprehension, arrest and trial of persons not charged with criminal offense, alleged to be of unsound mind, by filing of information under oath before a county judge or justice of the peace, and the issuance of a warrant of arrest thereon and return thereof to the county judge; providing for the setting of a time and place for the hearing of said complaint and for notice thereof to such persons; providing for the summoning of a jury to hear and determine the issues to be submitted in said cause; providing for a

procedure for determining and adjudicating the restoration to sound mind; providing for the protection of those dealing with persons of unsound mind who have not been so adjudicated; providing this Act shall not affect any pending court action or proceeding, and that if any section, clause, or provision of this Act shall be declared to be invalid, such holding shall not affect any other section, clause, or provision hereof; providing that this Act shall be cumulative of Articles 5550 to 5561, both Articles inclusive, of the 1925 Revised Civil Statutes of Texas; and validating proceedings, orders, and judgments of county or probate courts adjudging certain persons to be of unsound mind, and declaring an emergency. [Acts 1937, 45th Leg., p. 1049, ch. 446.]



## TITLE 93—MARKETS AND WAREHOUSES

Chap.

9. Marketing Agreements [New].

### CHAPTER SIX—PUBLIC WEAIGHER

Art.

5704—A. Public weighers in counties of 290,000 to 320,000; election; deputies; bonds of deputies [New].

Art. 5704—A. Public weighers in counties of 290,000 to 320,000; election; deputies; bonds of deputies

In precincts located in counties having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred twenty thousand (320,000) inhabitants according to the last preceding or any future Federal Census, where a Public Weigher is elected by the people in any last election held for that purpose, no Public Weigher shall be appointed to perform the same or similar services and the authority now vested in the Governor, the Commissioner of Agriculture and the Commissioners' Courts to so appoint or authorize other persons to perform the same duties, or similar duties as elected Public Weighers is hereby repealed only to the extent of its conflict with this Act. The elected Public Weigher in such counties shall have authority to appoint a sufficient number of deputies to conveniently serve the public need; and such deputies, before taking the oath of office, shall be required to give a bond approved by the Commissioners' Court of the county where appointed to serve as a deputy, in the sum of One Thousand (\$1,000.00) Dollars conditioned as provided in the bond required to be given by the elected Public Weigher, as to liability. Added Acts 1939, 46th Leg., Spec.L., p. 854, § 1.

Effective April 7, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that

the Act should take effect from and after its passage.

### CHAPTER NINE—MARKETING AGREEMENTS [NEW]

Art.

5764a. Citrus marketing agreements; purpose of Act.

Art. 5764a. Citrus marketing agreements; purpose of act

Section 1. The unreasonable waste and inefficient use of the citrus resources, occasioned by the marketing within the State of Texas of greater quantities of fresh citrus fruits than are reasonably necessary to supply the demands of the market, are opposed to public interest. The difficulty inherent in any attempt of individuals to correlate within a reasonable degree the citrus production current demand creates chaotic economic conditions in the citrus areas of the State as defined in this Act of such severity as to imperil the ability of citrus producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase, and increasing the tax burdens of other taxpayers for the same purposes, and is rendering it impossible for producers to be reasonably assured of adequate standard

of living for themselves and their families. In the interest of the public welfare and general prosperity of the State, the unreasonable waste and inefficient use of citrus resources involved in the marketing in this State of citrus fruits should be eliminated, while at the same time preserving to citrus producers of the areas covered by this Act an equality of opportunity.

#### Definitions

Sec. 2. As used in this Act, the following terms shall mean:

(a). "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(b). "Person" means individual, partnership, corporation, association, and/or any other business unit.

(c). "Producer" means any person engaged in the production of citrus fruits in the State of Texas for commercial purposes, or who is a substantial stockholder in a corporation engaged in the production of citrus fruits in the State of Texas for commercial purposes.

(d). "Handler" means any person who packs or ships citrus fruits, or causes citrus fruits to be packed or shipped in the current of intrastate commerce so as not to directly burden, obstruct, or affect interstate and/or foreign commerce.

(e). "Ship" means to convey citrus fruits, or cause citrus fruits to be conveyed, in the current of intrastate commerce, by rail, boat, truck, or any other means whatsoever (except by express or parcel post), whether as owner, agent, or otherwise.

(f). "Shipment" shall be deemed to take place when citrus fruits, or citrus fruit, is loaded into a car, or any other conveyance for transportation in the current of intrastate commerce.

(g). "Citrus fruits" or "citrus fruit" means grapefruit, oranges, and tangerines grown in the area of Texas covered by this Act.

(h). "Variety" or "varieties" as used in this Act means classifications or groups in the case of oranges as follows: (a) early season oranges, and (b) valencias, including all varieties of valencias and Lou Gim Gongs; in the case of grapefruit as follows: (a) Marsh and other seedless varieties except pinks, (b) Duncan and other seeded varieties except pinks, (c) pinks of the seeded type, and (d) pinks of the seedless type. All tangerines and temple oranges are grouped together as one variety.

(i). "Intrastate commerce," as used in this Act, means all commerce other than that which is in the current of interstate or foreign commerce, or which directly burdens, affects, or obstructs interstate or foreign commerce.

(j). "Standard packed box" as used in this Act means a unit of measure equivalent to one and three-fifths (1-3/5) U. S. bushels of citrus fruit, irrespective of the container in which same is held.

#### Marketing agreements and licenses as to intrastate transactions

Sec. 3. Subject to the provisions of this Act, the Commissioner is hereby authorized and empowered to execute marketing agreements and to issue licenses under this Act to persons engaged in transactions of intrastate commerce within the areas of this State in the marketing, processing, packing, shipping, handling, or distributing of citrus fruits.

#### Notice of hearing; procedure

Sec. 4. Whenever the Commissioner has reason to believe that the execution of a marketing agreement or the issuance of a license, or both, will tend to effectuate the declared policy of this Act with respect to

citrus fruits, he shall, either upon his own motion, or upon application of any producer or handler of such commodity give due notice of, and an opportunity for hearing upon a proposed marketing agreement or license, or both. Such notice shall be given by posting at the office of the Commissioner at Austin, and by mailing a copy of such notice to the last known address of all known handlers affected by such agreement or license whose names appear upon the most recent lists in the office of the Commissioner. Such notice shall also be mailed to any such person who shall have filed with the Commissioner a request for such notice.

Such hearing shall be held within the citrus area of the State of Texas as defined in this Act. At said hearing the Commissioner shall receive and hear the evidence offered by any interested person in support of, or in opposition to, the issuance of such marketing agreement or license. All evidence and exhibits used by the Commissioner or introduced at such hearing shall, within a reasonable time after being so used or so introduced, be available at a central point to all interested parties. Such hearings may be adjourned from time to time and from place to place in the discretion of the Commissioner. A transcript of the proceedings at such hearings shall be made by the Commissioner and shall be open for inspection by any interested party.

**Findings of fact prerequisite to marketing agreement or license**

Sec. 5. If upon such hearing it shall be found by the Commissioner that the following facts actually exist:

1. The supply of citrus fruits available for marketing exceeds or is likely to exceed the demand therefor at prices which will provide a reasonable return to representative producers of such citrus fruits;

2. The return to producers of such citrus fruits will tend to be increased through the operation of the marketing plan;

3. The marketing plan may be operated without permitting unreasonable profits to producers of such citrus fruits and without unreasonably enhancing prices of such citrus fruits to consumers;

4. The plan will tend to advance public welfare and conserve the agricultural wealth of the State by preventing threatened economic or agricultural waste; and will tend to prevent disorderly marketing of citrus fruits;

he shall make written findings to that effect and shall enter into a marketing agreement or agreements and issue licenses, or both. If the Commissioner shall find against the existence of any of the facts required to be present under this Section, he shall not issue such marketing agreement or license.

**Findings, matters considered in making**

Sec. 6. The Commissioner shall base the findings required by Section 5 hereof upon such of the following matters as shall be relevant, and in the administration of such marketing agreement or license, when and if issued, shall take the same into consideration:

(a) The quantity of the several grades, varieties and qualities of the particular citrus fruits under consideration and available for distribution to consumers in the marketing season or seasons during which the proposed program is to be effective.

(b) The quantity of the various grades, varieties and quality of such citrus fruits required by consumers during the marketing season or seasons during which the proposed program is to be effective.

(c) The cost of production of such citrus fruits.

(d) The general purchasing power of consumers thereof.

- (e) The general level of prices of commodities which farmers buy.
- (f) The general level of prices of other commodities which compete with or are used as substitutes for such citrus fruits.
- (g) Any other relevant evidence.

#### Terms and conditions of agreements or licenses

Sec. 7. Marketing agreements executed and licenses issued pursuant to this Act shall contain one or more of the following terms and conditions and no others, except as provided in Section 6 of this Act:

(1) Limiting, or providing methods for the limitation of the total quantity of any variety of citrus fruit, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in, or transported to, any or all markets in intrastate commerce.

(2) Allotting, or providing methods for allotting, the amount of citrus fruits, or any grade, variety, size, or quality thereof, which each handler may market in or transport to any or all markets other than in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such citrus fruits, under a uniform rule based upon (1) the amounts of such citrus fruits, or any grade, variety, size, or quality thereof, which each such handler has available for current shipment, or (2) upon the amounts shipped by each such handler in such prior period as the Commissioner determines to be representative, or both, to the end that the total quantity of such citrus fruits, or any grade, variety, size, or quality thereof, to be marketed in, or transported to any or all markets, other than in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such citrus fruits, during any specified period or periods, shall be equitably apportioned among all of the handlers thereof.

(3) Determining, or providing methods for determining, the existence and extent of the surplus of such citrus fruits, or of any grade, variety, size, or quality thereof, and providing for the control and disposition of such surplus, but so as not to burden or obstruct interstate or foreign commerce in such citrus fruits, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

#### Additional terms and conditions

Sec. 8. Marketing agreements executed and licenses issued under this Act shall, in addition, contain one or more of the following terms and conditions:

(1) Providing for the selection by the Commissioner, or a method for the selection by the Commissioner, of an administrative committee or committees and defining their powers and duties. Such powers shall be limited:

(a) To administering such license in accordance with its terms and provisions;

(b) To making rules and regulations to effectuate the terms and provisions of such license;

(c) To receiving, investigating, and reporting to the Commissioner complaints of violations of such license;

(d) To recommending to the Commissioner amendments to such license;

(e) To collecting from each handler a fee or assessment representing his pro rata share of such estimated expenses, including expenses incurred in hearings held on, and in the execution of such marketing agreement, as the Commissioner, after the submission to him by such admin-

istrative agency or agencies of a proposed budget, finds will probably be required to cover expenditures necessarily to be incurred by such agency or agencies, during any period specified by him, for the maintenance and functioning of such agency or agencies; to receiving, expending, and accounting for the funds so collected, and to return to such handler his pro rata share of any unexpended balances which the administrative committee or committees, with the approval of the Commissioner, finds are not so required.

(2) Any other terms and conditions incidental to, and not inconsistent with, the terms and conditions specified in Section 7.

**Assent of handlers and producers; procedure**

Sec. 9. Pursuant to the provisions of this Act, the Commissioner may, with respect to citrus fruits, enter into a marketing agreement or issue a license thereunder, but no license issued pursuant to this Act shall become effective (a) unless and until the handlers of not less than fifty-one (51) per cent of the volume of the commodity covered by such license, or fifty-one (51) per cent of the number of such handlers, have assented thereto in writing, and (b) unless and until the Commissioner determines that the issuance of such license is approved or favored, (1) by at least sixty-six and two-thirds (66-2/3) per cent of the producers who, during a representative period, determined by the Commissioner, have been engaged within the area covered by such license in the production for market of the citrus fruits covered thereby in commercial quantities, or, (2) by producers who, during such representative period, have produced for market for sale at least sixty-six and two thirds (66-2/3) per cent of the volume of such citrus fruits produced for market within the area covered by such license.

Such representative period may by the Commissioner be determined to be the next preceding crop season prior to the holding of said hearing, or may be such other representative period as the Commissioner may determine.

In the determination of whether the issuance of such license is approved or favored pursuant to the provisions of this Section, the Commissioner is required to determine the approval or disapproval of producers with respect to the issuance of any license or order, or any term or condition thereof, or the termination thereof, and the Commissioner shall consider the approval or disapproval by any Cooperative Association of Producers, bona fide engaged in marketing citrus fruits or products thereof covered by such license or order, or in rendering services for or advancing the interest of the producers of such citrus fruits, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with such cooperative association of producers.

Such approval, when executed by such cooperative marketing association may be executed in the name of such association and need not set forth the names of the producers on whose behalf it signs.

**License, issuance of; notice**

Sec. 10. (1) Whenever any member of any class of handlers, processors, or distributors is licensed hereunder, an identical license shall be issued to all members of the same class of handlers, processors, or distributors.

(2) Upon the issuance of any license, or any amendment thereof, a notice of said license or amendment shall be posted on a public bulletin board to be maintained by the Commissioner in his office and a copy of

such notice shall be published in a daily newspaper of general circulation published in the citrus area covered by this Act, and in such other paper or papers as the Commissioner may prescribe. No license or any amendment thereof shall become effective until three (3) days after such posting and publication. It shall also be the duty of the Commissioner to mail a copy of the notice of said license to all known licensees whose names and addresses may be on file in the office of the Commissioner and to every person who files in the office of the Commissioner a written request for such notice.

**Termination or suspension of license by Commissioner**

Sec. 11. (1) Whenever, upon his own investigation, or otherwise, the Commissioner finds that any marketing agreement theretofore executed or any license issued under this Act, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this Act, he shall terminate, or suspend for a specified period, the operation of such marketing agreement or license or such provision thereof.

(2) If the Commissioner finds that the termination of any license or marketing agreement is favored by a majority of the producers who, during such representative period determined by the Commissioner, have been engaged in the production within the area in the State of Texas as covered by this Act for marketing of citrus fruits specified in such marketing agreement, or license, and who during such representative period, produced for market more than sixty-six and two-thirds (66-2/3) per cent of the volume of such citrus fruits produced for market within the area in the State of Texas covered by this Act, or produced within the area in the State of Texas covered by this Act for marketing elsewhere, the Commissioner shall terminate, or suspend for a specified period, such marketing agreement or license or any term or provision thereof, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or license.

**Amendment of agreement or license; notice; hearing; findings necessary**

Sec. 12. Whenever the Commissioner shall have reason to believe that an amendment of any marketing agreement or license is necessary, or desirable, in order to effectuate the policy of this Act, he shall call a hearing upon such amendment. Such hearing shall be held in the same manner and upon the same notice as upon an original marketing agreement or license. The notice of hearing shall refer by name and date of execution of the agreement or to the issuance of license, or both, to which the amendment is proposed. At such hearing the Commissioner shall receive and hear evidence offered for and against the proposed amendment by any interested person.

If upon such hearing upon said proposed amendment it shall be found by the Commissioner that the following facts actually exist:

1. The proposed amendment will not prevent such marketing agreement and license, or either, from meeting the requirements of Section 5 of this Act;

2. The proposed amendment will tend to facilitate the administration of such marketing agreement and license, or will enable such marketing agreement and license to better meet the requirements of Section 5 of this Act;

he shall make written findings to that effect, and shall execute such amendment to such marketing agreement, or shall issue such amendment to such license, or both. If the Commissioner shall find against the existence of any of the facts required to be present under this Section, he

shall not issue such amendment to such marketing agreement or license. Such findings, if against the existence of any such facts, shall in no way impair or affect the marketing agreement or license to which said amendment was proposed.

In considering such amendment, the Commissioner shall take into consideration the evidence presented at the original hearing on the marketing agreement, or license to which such amendment is proposed, and upon any prior amendment thereto.

No amendment to a marketing agreement or license shall be effective until approved in the same manner as required by Section 9 of this Act for the original marketing agreement or license to which such amendment was proposed.

#### **Rules, regulations and orders of Commissioner**

Sec. 13. The Commissioner may adopt and enforce all rules, regulations, and orders necessary or desirable to carry out the provisions of this Act and not inconsistent with law. Every general rule, regulation, or order of the Commissioner shall be posted for public inspection in the main office of the Commissioner at least three (3) days before it shall become effective, and shall be given such further publicity, by advertisement in a daily newspaper of general circulation in the territory affected by the issuance of such rule, regulation, or order, or otherwise as the Commissioner shall deem advisable. An order applying only to a person or persons named therein shall be served on the person or persons affected: (1) by personal delivery of a certified copy; or (2) by mailing a certified copy in a sealed envelope with postage prepaid to each natural person or in the case of a corporation in like manner to any officer or agent thereof. Compliance with these provisions shall constitute due and sufficient notice to all persons affected by such rule or order. The Commissioner shall upon request mail to any person affected by any general rule or regulation promulgated by him, a copy of the same and may charge a reasonable fee therefor.

#### **Revocation or suspension of license for violation thereof; criminal penalty; civil liability; injunction**

Sec. 14. (1) The Commissioner may, after reasonable notice and opportunity to be heard, revoke or suspend the license of any person issued hereunder for violation of such license or any provision thereof.

(2) Every person who violates any provision of any marketing agreement or license to which he is subject or who, after due revocation of his license, or while the same stands duly suspended, engages in transactions mentioned therein and regulated thereby, shall be guilty of a misdemeanor and on conviction thereof, punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500), or by imprisonment of not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment. Each day during which any of the violations above referred to continue shall constitute a separate offense.

(3) Any person willfully exceeding any quota, allotment, or salable percentage fixed for him by or under any license issued by the Commissioner, or any amendment thereto or any rule, regulation, or order issued by the Commissioner, or who shall make any shipment without first obtaining a required allotment or quota or qualifying to ship his salable percentage, or any other person knowingly participating or aiding in so doing, shall become civilly liable to the State in a sum equal to three times the current market value of any excess or shipment, such sum to be recoverable in a civil suit, brought in the name of the State of Texas or

in the name of the administrative agency under the particular license involved. The funds so collected shall be used in the administration of the particular license.

(4) The Attorney General of this State, or any District Attorney of this State or any County Attorney, may, upon his own initiative, and shall upon complaint of any person, if after investigation he believes a violation to have occurred, bring an action in the name of the State of Texas in any court of competent jurisdiction of the State of Texas for an injunction against any person violating any provisions of any marketing agreement or license or order, rule, or regulation duly made or promulgated thereunder to which he is subject or who, after due revocation of his license or while the same stands duly suspended, engages in transactions mentioned therein and regulated thereby.

(5) Any administrative agency under any marketing agreement or license may, with the approval of the Commissioner, bring an action similar to that described in paragraph (3) of this Section.

(6) In any action brought to enforce any of the provisions of this Act, as provided in this Section 14:

(a) The judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff a reasonable attorney's fee and any and all costs of suit.

(b) Any such action may be commenced either in the county where any defendant resides, or where any act or omission or part thereof complained of occurred.

(7) The penalties and remedies herein prescribed with regard to any violation mentioned in this Section 14 shall be concurrent and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and all other civil, criminal, or administrative rights, remedies, forfeitures, or penalties provided or allowed by law with respect to any such violation.

#### **Assessments and fees; collection; record; reports**

Sec. 15. (1) Any assessment or fee duly fixed and levied pursuant to any such marketing agreement or license, in accordance with Section 8, paragraph (2), subdivision (e) of this Act, shall constitute a personal debt of every person so assessed and shall be immediately due and payable to the administrative agency charged with the collection thereof and the latter may in its own name, with the approval of the Commissioner, bring an action in a State Court of competent jurisdiction for the collection thereof.

(2) Any funds collected by the administrative agency from the levying of such fees and assessments shall be used for the purpose set forth in the marketing agreement or license under which it was collected. A full and complete record thereof shall be kept to which the Commissioner may have access at any time, and a report of the activities and proceedings shall be filed with the Commissioner from time to time as he may require.

#### **Records and books of persons subject to agreement or license; information furnished Commissioner; Commissioner to take testimony and issue subpoenas; perjury**

Sec. 16. (1) All persons subject to a marketing agreement or license issued hereunder shall maintain books and records reflecting their operations under said marketing agreement or license and shall furnish to the Commissioner or his duly authorized or designated representative, such information as may be requested by them relating to operations under said marketing agreement and license, and shall permit the inspec-



tion by said Commissioner or his duly authorized or designated representative, of such portions of such books and records as relate to operations under the said marketing agreement and license.

(2) Information obtained by any person hereunder shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by an administrative agency to give legal advice thereon, or by Court order.

(3) For the purpose of carrying out the terms of this Act the Commissioner may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of relevant books, records, or documents of any kind.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the Commissioner in obedience to the subpoena of the Commissioner on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the Commissioner in obedience to a subpoena issued by him; provided that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**Filing fee and deposit; collection of funds by committee; custody of funds; distribution of unexpended funds**

Sec. 17. Every application for a marketing agreement and license submitted to the Commissioner for approval shall be accompanied by a filing fee of Ten Dollars (\$10), and shall be accompanied by a deposit from the applicant in such amount as the Commissioner may deem sufficient and necessary to defray the expenses of preparing and making effective such marketing agreement and license. The Commissioner shall thereafter exact and require, by requisition on the appropriate administrative committee or committees, charged with the collection of funds for expenses under such marketing agreement, that such committee or committees collect, report, and pay over monthly to the Commissioner the amount deemed necessary and sufficient, and requisitioned from such administrative committee or committees by the Commissioner, to defray the actual expenses of the Commissioner to be incurred during the subsequent month in the administration and enforcement of any such marketing agreement or license, under such rules and regulations as he may prescribe.

But all moneys collected from assessments, or otherwise, imposed under this Act and under marketing agreements executed in pursuance thereof, or licenses issued thereunder, by the administrative committee or committees created under this Act, not requisitioned by the Commissioner for administrative expenses as hereinbefore provided in this Section, shall remain in the custody of such administrative committee or committees until the close of the current marketing season or year for which same was collected (not to extend further than the period covered by such marketing agreement), at which time the administrative committee or committees shall return to such handler or handlers his pro rata share of such unused, unexpended, and unrequisitioned assessment or assessments.

**Reports by Commissioner as to moneys received; deposit in State Treasury; Agriculture Department officers and employes used in carrying out act**

Sec. 18. (1) All moneys received by the Commissioner hereunder shall be by him, at the end of each month, reported to the State Comptroller and at the same time deposited in the State Treasury. All moneys so credited are hereby appropriated for use of said Commissioner to be expended in accordance with law in carrying out the provisions hereof.

(2) Within thirty (30) days prior to each Regular Session of the Legislature, the Commissioner shall submit to the Governor a full and true report of transactions under this Act during the preceding biennium, including a complete statement of receipts and expenditures under this Act during the period and shall submit quarterly to the administrative agency under each marketing agreement or license a complete statement of receipts and expenditures in connection with the administration of each marketing agreement or license during the quarter.

(3) The Commissioner is authorized to use, and to permit the administrative agency or agencies, committee, authority, or body created pursuant to any marketing agreement executed or license issued under this Act, to use the various employees or officers of the State Department of Agriculture in carrying out the provisions of this Act or any marketing agreement executed or license issued pursuant thereto.

**Anti-trust laws unaffected**

Sec. 19. Nothing in this Act shall alter, repeal, change or modify the anti-trust laws of this State, and if any section and/or subsection of this Act is in violation of the anti-trust laws, such section and/or subsection shall fall and the anti-trust laws both civil and criminal shall stand and prevail over said section and/or subsection held to be in contravention of the anti-trust laws of this State.

**Cooperating with other states and Federal government to secure uniformity of administration**

Sec. 20. The Commissioner may confer and cooperate with the legally constituted authorities of other States and of the United States, in order to secure uniformity in the administration of Federal and State marketing agreements, standards, licenses, or orders and in the regulations thereby prescribed, and said Commissioner of Agriculture shall have power to conduct hearings jointly with the Secretary of Agriculture of the United States, and may exercise his powers under this Act to effect such uniformity of administration and regulations not inconsistent with the provisions of this Act.

**Application of act limited to certain areas**

Sec. 21. This Act shall apply and be effective only in the areas of any three (3) citrus fruit producing counties whose boundaries are contiguous to each other and whose aggregate population according to the last preceding Federal Census was not less than one hundred and sixty-five thousand and forty-three (165,043) inhabitants.

**Name of act**

Sec. 22. This Act may be known and cited as the "Texas Citrus Marketing Act."

**Partial invalidity**

Sec. 23. If any section, sentence, clause, or part of this Act is for any reason held to be unconstitutional, such decision shall not affect the re-

maining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, sentence, clause, and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional. Acts 1937, 45th Leg., p. 724, ch. 362.

Filed without Governor's approval May 17, 1937.

Section 24 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for and authorizing "marketing agreements" with respect to citrus fruits or citrus fruit; authorizing the Commissioner of Agriculture of the State of Texas to enter into "marketing agreements" with producers, shippers, and/or handlers thereof in intrastate commerce; setting forth the imperative necessity therefor; defining terms; prescribing duties and powers of the Commissioner of Agriculture of the State of Texas with respect thereto; authorizing the giving of notice in prescribed manner, and hearing after notice, and determination of facts incident to marketing agreements; providing for the granting of licenses or orders in connection therewith and prescribing the terms thereof; providing for the revocation and suspension of same; providing what may be embraced in such marketing agreements; providing for the selection of administration committee, or committees; providing for suspension or termination of marketing agreements and licenses or orders issued thereunder; providing for enforcement of such marketing agreements or licenses or orders; providing for suits by designated State officers or administrative agencies upon complaint of the violation of the terms of this Act or any marketing agree-

ment executed thereunder or licenses or orders issued pursuant thereto; providing for fees and assessments under this Act and under marketing agreements executed and issued in pursuance of this Act; providing for the collection, handling, and accounting for such fees and assessments under this Act; providing for keeping of prescribed records and furnishing information to Commissioner of Agriculture and to the Legislature of the State of Texas respecting transactions under this Act; providing for amendments to such marketing agreements and licenses or orders and the manner of effecting same; defining offenses and prescribing penalties and punishments therefor and how applied; providing saving clause in Act; providing Act may be cited as "Texas Citrus Marketing Act"; providing the area where effective; providing nothing in this Act shall alter, repeal, change or modify the anti-trust laws of this State; providing authority for Commissioner of Agriculture to issue process for witnesses and enforce their attendance; providing for immunity from punishment for anyone giving evidence tending to incriminate himself; providing for immunity from punishment under the law against monopolies or combinations in restraint of trade where act done was in pursuance of this Act; providing for cooperation by the Commissioner of Agriculture of the State of Texas with other States and with the United States, and declaring an emergency. [Acts 1937, 45th Leg., p. 724, ch. 362.]

## TITLE 94—MILITIA

## CHAPTER THREE—NATIONAL GUARD

## GENERAL PROVISIONS

Art.

5890c. Bonds, debentures, etc., of Texas National Guard Armory Board as legal and authorized investments [New].

## ORGANIZATION

## Art. 5780. 5778 Strength

Lease of land on campus of Texas Technological College for armory, see art. 2632b.

## ADJUTANT GENERAL

## Art. 5790. 5790 Powers

The Adjutant General shall be in control of the military department of this State, and subordinate only to the Governor in matters pertaining to said Department, or the military forces of this State; and he shall perform such duties as the Governor may from time to time entrust to him, relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this State; and he shall conduct the business of the Department in such manner as the Governor shall direct. He shall have the custody and charge of all books, records, papers, furniture, fixtures and other property relating to his Department, and shall perform as near as practicable, such duties as pertain to the Chief of Staff, the Military Secretary and other Chiefs of Staff Departments, under the regulations and customs of the United States Army.

For and on behalf of the State of Texas, the Adjutant General is authorized to execute leases or sub-leases between the State of Texas, as lessee or sub-lessee, and the Texas National Guard Armory Board, as lessor or sub-lessor, for any building or buildings and the equipment therein and the site or sites therefor to be used for armory and other proper purposes, and to renew such leases or sub-leases from time to time; and the Adjutant General shall not lease or sub-lease any property for armory purposes in or about any municipality from any person other than the Texas National Guard Armory Board, so long as adequate facilities for such armory purposes in or about such municipality are available for renting from the Texas National Guard Armory Board. As amended Acts 1939, 46th Leg., p. 486, § 1.

Effective May 1, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

## Art. 5798a. Veterans' State Service Officer

Section 1. There is hereby created the office of Veterans' State Service Office of the State of Texas to be composed of a Veterans' State Service Officer, who shall receive a salary of not to exceed Three Thousand (\$3,000.00) Dollars per annum, to be paid in twelve (12) equal monthly installments, and such Assistant Veterans' State Service Officers as shall hereafter be appointed, each Assistant Veterans' State Service Officer

stationed at each regional office and/or combined facility of the United States Veterans' Administration shall receive a salary of not to exceed Twenty-two Hundred (\$2200.00) Dollars per annum payable in twelve (12) equal monthly installments, and each of the other Assistant Veterans' State Service Officers shall receive a salary of Eighteen Hundred (\$1800.00) Dollars per annum, payable in twelve (12) equal monthly installments, and such office personnel as shall hereafter be employed, at such salaries as shall be fixed by the Legislature, to be attached to the Adjutant General's Department of the State of Texas. All salaries, travel and other expenses to be paid by warrants approved by the Adjutant General.

#### **Appointment of assistants; qualifications**

<sup>1</sup>The Legislature, in its regular biennium appropriation bill, shall determine the number of Assistant Veterans' State Service Officers, and such additional employees as may be determined to be necessary, and when so determined, the Adjutant General, with the advice and consent of the Governor, shall make such appointments, who shall be appointed to serve for a term of two (2) years, commencing at the beginning of the biennium, and shall serve for said biennium unless removed for cause.

In no event shall any officer or employee be appointed unless authorized in the regular biennium appropriation bill. Such Veterans' State Service Officer and such Assistant Veterans' State Service Officers shall be qualified by education and training for the duties of such offices. They shall be experienced in the law, regulations, and rulings, of the United States Veterans' Administration controlling the cases coming before them, and said field men shall have served in the active military, naval, or other armed forces or nurses corps of the United States sometime during the period between April 6, 1917, and November 11, 1918, or between April 24, 1898, and July 4, 1902, and have been honorably discharged therefrom. Such persons shall have had at least two (2) years experience as a service officer in a nationally recognized veterans' organization engaged in service work to war veterans, as such term is defined by the United States Veterans' Administration, either as a Post, State, Department or National Service Officer which shall be evidenced by a statement of qualifications filed by the individual seeking appointment, with the Adjutant General, upon forms supplied by the Adjutant General, which shall be certified to by the State Commander of the veterans' organization to which such applicant shall belong and a certificate issued by the United States Veterans' Administration showing that applicant is authorized to appear on behalf of claimants before the rating boards and/or other boards and/or Departments of the United States Veterans' Administration. Such statement of qualifications and supporting certificates shall be filed with the Adjutant General fifteen (15) days before said appointments are made, and the filing thereof shall be a condition precedent to appointment.

<sup>1</sup> Probably should read "Sec 2".

#### **Duties enumerated**

Sec. 3. The duties of the Veterans' State Service Officer and the Assistant Veterans' State Service Officers of the State of Texas shall be to aid all residents of the State of Texas who served in the military, naval or other armed forces or nurses' corps, of the United States of America during any war or peacetime enlistment, and/or widows and/or orphans, and/or dependents in preparing, submitting and presenting any claim against the United States, or any State, for compensation, hospitalization, insurance or other aid or benefits to which they may be entitled under existing laws of the United States, or any State, or such laws as may hereafter be enacted, pertinent thereto. It shall also be their duty to aid

the United States Government, or any State, to defeat all unjust claims of veterans that may come to their attention. No fees, either directly or indirectly for any service rendered by such Veterans' State Service Officer or Assistant Veterans' State Service Officers, shall be charged applicant, nor shall they permit the payment of any fee by applicant to any third person for any services that might be rendered by them.

**Headquarters and home stations; travel and reports**

Sec. 4. The headquarters of the Veterans' State Service Office shall be in Austin, Travis County, Texas. The home stations of Assistant Veterans' State Service Officers shall be, one at each regional office and/or combined facility of the United States Veterans' Administration in Texas, and at such places in the State of Texas as the Adjutant General shall direct. Such officers shall travel on orders from the Adjutant General and shall submit such reports in writing as may be required by the Adjutant General.

**Officers to administer oaths; entry into State institutions**

Sec. 5. Said officers shall have a seal of office and shall be authorized to administer oaths in the proper performance of their duties and such officers shall be given official entry into the records of the eleemosynary and penal institutions of the State of Texas under the rules and regulations of the Board of Control governing eleemosynary institutions and under the rules and regulations of the Texas Prison Board governing the Texas Prison System, for the purpose of determining the status of any person confined therein as regards to any benefit to which such person may be entitled. [As amended Acts 1937, 45th Leg., 1st C.S., p. 1782, ch. 21, § 1.]

Effective July 15, 1937.

Section 2 of the Act of 1937 repeals all conflicting laws and parts of laws; section

3 declared an emergency and provided that the Act should take effect from and after its passage.

**Repeals**

Sec. 6. All laws and parts of laws in conflict herewith are hereby repealed.

**Partial Invalidity**

Sec. 7. If any section, sentence, clause, or part of this Act shall for any reason be held to be invalid, such decision shall not affect the remaining portions of this Act, and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause, or part thereof irrespective of the fact that any other sentence, section, clause, or part thereof may be declared invalid. As amended Acts 1937, 45th Leg., p. 244, ch. 128, § 1.

Section 2 of the amendatory act of 1937 declared an emergency making the act effective on and after its passage.

**GENERAL PROVISIONS**

**Art. 5885. 5888 Assistance**

Each Commissioners' Court and the Council or Commission of each City or Town in this State is hereby authorized in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the administrative units of the National Guard of this State located in their respective Counties and in or near their respective Cities or Towns, not to exceed the sum of One Hundred (\$100.-

For Annotations and Historical Notes, see *Vernon's Texas Annotated Statutes*

00) Dollars per month for such expenses from any one such Court, Council or Commission for any one organization; and in addition, in behalf of their respective Counties, Cities or Towns, to donate, either in fee simple or otherwise, to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to said Board, one or more tracts of land as sites upon which to construct Armories and other buildings suitable for use by such units; and any and all such donations heretofore made to said Board are hereby validated and any such donation heretofore made to any such administrative unit, either as a corporation or otherwise, and conveyed or to be conveyed to said Board, is hereby validated. As amended Acts 1939, 46th Leg., p. 495, § 1.

Effective May 1, 1939. act should take effect from and after its  
Section 2 of the amendatory act of 1939 passage.  
declared an emergency and provided that the

**Art. 5890b. Leave of absence of State or Municipal employees with pay**

Section 1. There is hereby created the Texas National Guard Armory Board to be composed of five (5) members who shall serve without compensation other than their actual, necessary expenses while traveling on the business of the Board. Those three (3) individuals who are acting as members of the Texas National Guard Armory Board as created and defined by Chapter 366 of the Regular Session of the Forty-fifth Legislature of the State of Texas on the effective date of this Act, together with the senior active officer of the National Guard of Texas, not of the three (3) above mentioned, and the senior cavalry officer of said Guard, shall constitute the initial membership of the Board created by this Act. Of the three (3) individuals first above mentioned, the oldest shall have the initial term of six (6) years, the next oldest the four (4) year and the youngest of the three (3) the two (2) year initial term. Of the other two (2) members, the cavalry officer shall have the three (3) year term, and the other the one (1) year term. All such initial terms shall date from the date this Act becomes effective. Except as above provided, the terms of membership on said Board shall be of six (6) years' duration.

Each member of said Board shall, within fifteen (15) days from the day upon which this Act becomes effective, or from the date of his receipt of notice of his eligibility to serve to fill a vacancy, qualify by taking and filing with the Secretary of State the constitutional oath of office. Failure to qualify, expiration of the term of a member, or the occurrence of his death, resignation or ineligibility to serve, shall create a vacancy in such membership which shall be filled in the following manner: Within five (5) days after the occurrence of a vacancy the Adjutant General of Texas shall certify to the Secretary of State and to the officer concerned, the name of the senior active officer of the National Guard of Texas who is not then occupying an unexpired term as a member of said Board, together with the length of term in which the vacancy exists. The officer whose name is so certified, or those later certified as herein-after provided, shall be eligible to fill such vacancy. In case such officer shall, for any reason, fail to qualify within a period of fifteen (15) days from the date of such certification, the said Adjutant General shall forthwith certify that fact to the Secretary of State, and shall certify to him and to the officer concerned the name of the next senior active officer of the said Guard in like manner as hereinabove provided, and so on until an officer so certified qualifies to fill the vacancy.

An active officer, within the meaning of the above provisions, shall be any regularly commissioned officer of the line of the said Guard, other than retired officers. No change in military status while a member and no

retirement of an active officer for age or length of service shall affect his eligibility to serve out his term as a member of said Board; but if he shall resign from or be separated from active service in said National Guard, otherwise than by such retirement, he shall thereby become ineligible for designation to or service on the membership of said Board.

Seniority among active officers shall, for the purposes of the provisions of this Act, be determined, first, by grade in which commissioned; second, by date of commission in grade, the earliest in date to be senior; third, if that be the same, by date of birth; fourth, if both date of commission in grade and date of birth be the same, seniority shall be determined by the Governor of Texas.

The oldest and youngest, in age, of the members of said Board shall be, respectively, Chairman and Treasurer thereof, and the persons holding such offices shall change as age may determine when changes in the membership of said Board occur.

The Board shall act by resolution adopted at a meeting thereof called and held in accordance with its by-laws or rules and regulations. Three (3) members of the Board shall constitute a quorum for the transaction of business at all meetings and any action taken by the majority of the members of the Board present at any meeting thereof shall be deemed to be the action of the Board for all purposes; but if four (4) members are present and voting, an equal vote in both affirmative and negative shall defeat the proposition.

It shall be the duty of the Board to select a place for the headquarters of said Board, and such place of headquarters may be changed, from time to time, as the majority of said Board may determine.

Sec. 2. The Board hereby created shall be and it is hereby constituted a body politic and corporate. It shall succeed to the ownership of all property of, and all lease and rental contracts entered into by, the Texas National Guard Armory Board that was created by prior statutes and all of the obligations contracted or assumed by the last mentioned Board with respect to any such property and contracts shall be the obligations of the Board created by this Act. With this exception, no obligation of said former Board shall be binding upon the Board hereby created. It shall be the duty of said Board to have charge of the acquisition, construction, rental, control, maintenance and operation of all Texas National Guard Armories, including stables, garages, rifle ranges, hangers and all other property and equipment necessary or useful in connection therewith, and the said Board shall possess all powers necessary and convenient for the accomplishment of such duty, including, but without being limited thereto, the following express powers:

(a) To sue and be sued.

(b) To enter into contracts in connection with any matter within the objects, purposes or duties of the Board. It shall be the duty of the State Board of Control of the State of Texas to, for and on behalf of the said Armory Board, supervise the taking and tabulation of bids for work approved for bids by the said Armory Board and the construction under contracts executed by said Armory Board and the purchase of furniture and equipment such as is desired by the said Armory Board.

(c) To have and use a corporate seal.

(d) To appoint, employ and pay and dismiss an Executive Secretary, and, also, such other officials, counsel, lawyers, agents and employes as may be necessary to carry out the objects, purposes and duties of the Board, and to prescribe their duties and fix their compensation.

(e) To adopt, and from time to time to change or amend, all necessary by-laws, rules and regulations for the conduct of the business and affairs of the Board.



(f) To acquire, by gift or by purchase; for use as building sites or for any other purposes deemed by said Board to be necessary or desirable in connection with or for use of units of the Texas National Guard, property of any and every description, whether real, personal or mixed, including, but without limitation on the foregoing, leasehold estates in real property, and hold, maintain, sub-lease, convey and exchange such property, in whole or in part, and/or to pledge the rents, issues and profits thereof in whole or in part; also, to acquire, by gift or purchase, or by construction of the same, furniture and equipment suitable for Armory purposes and to hold, maintain, sub-lease, convey and exchange such furniture and equipment, in whole or in part.

(g) To construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property and to lease to the State of Texas, in the same manner as hereinafter provided with respect to other property, the buildings, and the sites thereon situated, which it may construct at Camps Mabry, Hulen and Wolters, and to lease and sub-lease, convey and exchange, in whole or in part, all of its property not located in either of said camps, and/or to pledge the rents, issues and profits of all of said property, wherever located, in whole or in part; provided, however, that before any building is constructed by said Board on the lands comprising either of said camps, the site therefor, in maximum area two hundred thousand (200,000) square feet, shall, promptly on said Board's request therefor to the said Adjutant General, be selected and described by a Board of Officers appointed from time to time for the purpose by the said Adjutant General, and such description shall be certified to said Armory Board and a copy thereof shall be furnished to and preserved in the office of said Adjutant General; and, provided, further, that when so selected and described and constructed upon, such sites shall be and become the property of the said Armory Board, for all the purposes contemplated by the Act of which this section is a part, as fully and absolutely as if the same had been acquired by a gift to or purchase by said Armory Board.

All such property, together with the rents, issues and profits thereof shall be exempt from taxation by the State of Texas or by any municipal corporation, county or other political subdivision or taxing district of this State.

(h) From time to time, to borrow money, and to issue and sell bonds, debentures and other evidences of indebtedness for the purpose of acquiring one or more building sites and buildings, and for the purpose of constructing, remodeling, repairing and equipping one or more buildings, such bonds, debentures or other evidences of indebtedness to be fully negotiable and to be secured as follows: By a pledge of, and payable solely from, the rents, issues and profits of all of the property of the Board; or by a pledge of, and payable solely from the rents, issues and profits, of the property acquired or constructed by the Board, in whole or in part, with the proceeds of the borrowing transactions. Provided, however, that interest falling due within twenty-four (24) months after the issuance and sale of any particular bonds, debentures or other evidences of indebtedness, or any series thereof, may be paid out of the proceeds of the sale thereof. Any such bonds, debentures or other evidences of indebtedness may be issued in series, and, if so issued, all series thereof issued under or secured by the same trust indenture or trust agreement, shall rank equally, without preference or priority of one series over another, whether by reason of the date of issue or negotiation thereof or date of maturity thereof or for any other reason. All such bonds, debentures or other evidences of indebtedness and the interest

thereon, shall be exempt from taxation (except inheritance taxes) by the State of Texas or by any municipal corporation, county or political subdivision or taxing district in the State. All bonds, debentures or other evidences of indebtedness authorized and issued under authority of this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts or other political corporations or subdivisions of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto. Said bonds, debentures, or other evidences of indebtedness may be sold by the Board in any manner it may determine; provided that no bonds, debentures or other evidences of indebtedness shall be issued and sold at a price which will be such that the interest costs of the money received by the Board from the sale thereof will exceed six (6%) per cent per annum, computed to maturity according to standard tables of bond values, and provided further that no bonds, debentures or other evidences of indebtedness shall be sold unless and until same shall have been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts. The Board shall have power from time to time to execute and deliver trust deeds and trust agreements whereunder any bank or trust company authorized by the laws of the State or of the United States of America to accept and execute trusts in the State, or any individual selected by the Board, may be named and act as Trustee. Any such trust deed or trust agreement shall be signed in the name and on behalf of the Board by the Chairman of the Board and countersigned by the Treasurer thereof and the corporate seal of the Board shall be thereto affixed and such seal attested by the Secretary of the Board; and any such trust deed or trust agreement may, if it name such bank or trust company to act as Trustee, contain provisions for the deposit with the Trustee thereunder and the disbursement by such Trustee of the proceeds of the bonds, debentures or other evidences of indebtedness issued thereunder or secured thereby, and/or the rents, issues and profits of all property acquired or constructed out of such proceeds, and, whether or not such bank or trust company be named as Trustee, may also contain such provisions for the protection and enforcement of the rights and remedies of the Trustee and the holders of such bonds, debentures or other evidence of indebtedness as the Board may approve, including provisions for the acceleration of the maturity of any such bonds, debentures or other evidences of indebtedness upon default by the Board in the performance or observance of any of the covenants or provisions of such bonds, debentures or other evidences of indebtedness or of the trust deed or trust agreement whereunder the same are issued or secured. Any such trust deed or trust agreement shall provide that all bonds, debentures or other evidences of indebtedness issued at any time thereunder shall be equally secured thereby but any such trust deed or trust agreement may contain and impose upon the Board limitations and conditions governing the right of the Board to issue additional bonds, debentures or other evidence of indebtedness. All such bonds, debentures or other evidence of

indebtedness shall be signed by the Chairman of the Board, countersigned by the Treasurer thereof, and the corporate seal of the Board shall be thereto affixed, and such seal attested by the Secretary of the Board, and in case any officer of the Board who shall have signed or attested any such bond, debenture or other evidence of indebtedness shall cease to be such officer before such bond, debenture or other evidence of indebtedness shall have been actually issued by the Board, such bond, debenture or other evidence of indebtedness may nevertheless be validly issued by the Board. Such bonds, debentures or other evidence of indebtedness may be issued in fully registered form without interest coupons, or in coupon form registerable as to principal only, or in bearer form with coupons attached. All of coupons shall be authenticated by the facsimile signature of the Treasurer of the Board; and,

(i) To execute and deliver leases, or sub-leases in the case of buildings located upon leasehold estates acquired by the Board, demising and leasing to the State of Texas through the Adjutant General, who shall execute the same for said State, for such lawful term as may be determined by the Board, any building or buildings and the equipment therein and the site or sites therefor, to be used for Armory and other purposes and to renew such leases or sub-leases from time to time; provided, however, that if at any time the State of Texas shall fail or refuse to pay the rental reserved in any such lease or sub-lease, or shall fail or refuse to lease or sub-lease any such building and site, or to renew any existing lease or sub-lease thereon at the rental provided to be paid, then the Board shall have the power to lease or sub-lease such building and equipment and the site therefor to any person or entity and upon such terms as the Board may determine. The law requiring notice and competitive bids shall not apply to leasing or sub-leasing of such property. The annual rental (which may be made payable in such installments as the Board shall determine) to be charged the State of Texas for the use of such property leased or sub-leased to it by the Board shall be sufficient to provide for the operation and maintenance of the property so leased or sub-leased, to pay the interest on the bonds, debentures or other evidences of indebtedness, if any, issued for the purpose of acquiring, constructing or equipping such property, to provide for the retirement of such bonds, debentures or other evidences of indebtedness, if any, and the payment of the expenses incident to the issuance thereof, as well as the necessary and proper expenses of the Board not otherwise provided for.

Sec. 3. As and when any of the property owned by the Board shall be fully paid for, free of all liens, and all debts and other obligations incurred in connection with the acquisition or construction of such property have been fully paid, the Board shall donate, transfer and convey such property, by appropriate instruments of transfer and conveyance, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department.

Sec. 4. The Board shall cause to be kept accurate minutes of its meetings and accurate records and books of account in conformity with approved methods of bookkeeping, clearly reflecting the income and expenses of the Board and all transactions in relation to its property. In the execution and administration of objects and purposes herein set forth, the Board shall have power to adopt means and methods reasonably calculated to accomplish such objects and purposes and this Act shall be construed liberally in order to effectuate such objects and pur-

poses. As amended Acts 1937, 45th Leg., p. 740, ch. 366; Acts 1939, 46th Leg., p. 487, § 1.

Effective May 1, 1939.

Section 2 of the amendatory act of 1939 provided that if any part or parts of the Act should be held to be unconstitutional, such unconstitutionality should not affect the validity of the remaining parts of the Act. The Legislature hereby declares that

it would have passed the remaining parts of the Act if it had known that such part or parts thereof would be declared unconstitutional.

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 5890c. Bonds, debentures, etc. of Texas National Guard Armory Board as legal and authorized investments

Section 1. All bonds, debentures, or other evidences of indebtedness authorized and issued by the Texas National Guard Armory Board, under authority of Senate Bill No. 326, passed at the Regular Session of the Forty-sixth Legislature of Texas and approved May 1, 1939,<sup>1</sup> and laws amendatory thereof, shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

Sec. 2. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional. Acts 1939, 46th Leg., p. 494.

<sup>1</sup> Article 5890b.

Effective May 23, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

##### Title of Act:

An Act providing that the securities issued by the Texas National Guard Armory Board shall be legal and authorized investments for life insurance companies and other concerns, officials, and persons,

as mentioned in the Act, and for public funds, including sinking funds of cities, school districts, and other political corporations or subdivisions of said State, and that such securities shall be eligible to secure the deposit of such public funds and sufficient security, to the extent of their value, for such deposits; providing that a finding of unconstitutionality of any part of this Act shall not affect the remainder; and declaring an emergency Acts 1939, 46th Leg., p. 494.

## TITLE 96—MINORS—REMOVAL OF DISABILITIES OF

### Art. 5922. 5947, 3499 Petition and hearing

The petition for such removal shall state the grounds relied on, whether the parents of the minor are living or dead, and the name and residence of each living parent. Such petition shall be sworn to by the father or mother of said minor or by any other credible person cognizant of the facts, and shall be filed in the District Court of the County where the minor resides, and a hearing had on any day of any term of said

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Court, or during a vacation of said Court. Provided that in District Courts of Districts having more than one county within such District, upon the filing of such petition, for removal of disabilities, in the County in which such minor resides, the District Judge of said Court may hold such hearing and remove the disabilities of such minor, in any County within such District wherein he may be then holding Court or may be found. As amended Acts 1939, 46th Leg., p. 497, § 1.

Effective April 18, 1939.

Section 2 of the amendatory act of 1939 the act should take effect from and after its declared an emergency and provided that passage.

## TITLE 99—NOTARIES PUBLIC

### Article 5949. 6002, 3503 Secretary of State to appoint all Notaries Public

The Secretary of State of the State of Texas shall appoint a convenient number of notaries public for each county. Notaries public may be appointed at any time, but the terms of all notaries public shall end on June 1st of each odd numbered year. To be eligible for appointment as notary public, a person shall be at least twenty-one (21) years of age and a resident of the county for which he is appointed. As amended Acts 1939, 46th Leg., p. 498, § 1.

Effective date, see section 3 of the Act.

Sec. 2 of the Act of 1939, provided that nothing in the Act should affect the term of office of any person qualifying as a notary public prior to the effective date hereof. Sec. 3 provided that the Act should become effective in the event and when the amendment to the Constitution of Texas proposed by Senate Joint Resolution No. 6 of the Reg-

ular Session of the Forty-sixth Legislature becomes a part of the Constitution. In the event such proposed amendment does not become a part of the Constitution, the Act in its entirety should be null and void and should never be in force and effect. Section 4 declared an emergency and provided that the act should take effect from and after its passage.

## TITLE 100—OFFICERS—REMOVAL OF

### Art. 5986. 6055, 3556, 3415 Not retroactive

No officer in this State shall be removed from office for any act he may have committed prior to his election to office. As amended Acts 1939, 46th Leg., p. 499, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory act of 1939

declared an emergency and provided that the act should take effect from and after its passage.

## TITLE 102—OIL AND GAS

## GENERAL PROVISIONS

Art.  
6008a. Production and use of sour gas from common reservoirs for carbon black; definitions [New].  
6008.—1. Interstate Compact to Conserve Oil and Gas; extension of compact [New].

## NATURAL GAS

Art.  
6053a. Investigation and regulation of use of malodorants [New].

## GENERAL PROVISIONS

## Art. 6008. 7849 Production and use of natural gas

Interstate Compact to Conserve Oil and Gas as extended to Sept. 1, 1941, see article 6008—1 and notes thereto.

## Art. 6008—1. Interstate Compact to Conserve Oil and Gas

Section 1. The Governor of the State of Texas is hereby authorized and empowered for and in the name of the State of Texas, to execute an agreement with other States now members of The Interstate Oil Compact Commission, by the terms of which The Interstate Compact to Conserve Oil and Gas, executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, shall be extended for a period of two (2) years from its expiration date (September 1, 1939), subject to the approval of Congress.

Sec. 2. The Interstate Compact to Conserve Oil and Gas referred to in the above Section and which was ratified, approved, and confirmed by Chapter 81 of the Acts of the Regular Session of the Forty-fourth Legislature of the State of Texas,<sup>1</sup> and which it is hereby proposed to extend by agreement subject to the approval of Congress, reads as follows:

## "An interstate compact to conserve oil and gas

## "Article I

"This agreement may become effective within any compacting State at any time as prescribed by that State, and shall become effective within those States ratifying it whenever any three (3) of the States of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing State may become a party hereto as hereinafter provided.

## "Article II

"The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

## "Article III

"Each State bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

"(a) The operation of any oil well with an inefficient gas-oil ratio.

"(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

“(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

“(d) The creation of unnecessary fire hazards.

“(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

“(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

“The enumeration of the foregoing subjects shall not limit the scope of the authority of any State.

#### “Article IV

“Each State bound hereby agrees that it will, within a reasonable time, enact Statutes, or if such Statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation Statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

#### “Article V

“It is not the purpose of this Compact to authorize the States joining herein to limit the production of oil or gas for the purpose of establishing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas preventing the avoidable waste thereof within reasonable limitations.

#### “Article VI

“Each State joining herein shall appoint a representative to a Commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several States for adoption or rejection.

“The Commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said States, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

“No action shall be taken by the Commission except: (1) by the affirmative votes of the majority of the whole number of the compacting States, represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting States at said meeting, such interest to be determined as follows: such vote of each State shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half year to the daily average production of the compacting States during said period.

#### “Article VII

“No State by joining herein shall become financially obligated to any other State, nor shall the breach of the terms hereof by any State sub-

ject such State to financial responsibility to the other States joining herein.

“Article VIII

“This Compact shall expire September 1, 1939. But any State joining herein may, upon sixty (60) days notice, withdraw herefrom.

“The representatives of the signatory States have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory States.

“This Compact shall become effective when ratified and approved as provided in Article I. Any oil producing State may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

“Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

“E. W. Marland

The Governor of the State of Oklahoma

“James V. Allred

The Governor of the State of Texas

“R. L. Patterson

For the State of California

“Frank Vesley

“E. H. Wells

“Hugh Burch

“Hiram M. Dow

For the State of New Mexico

“The following representatives recommend to their respective Governors and Legislatures the ratification of the foregoing agreement.

“John W. Olvey of Arkansas

“Warwick M. Downing of Colorado

“William Bell of Illinois

“Gordon F. Van Eenanaam

“Gerald Cotter of Michigan

“Ralph J. Pryor

“E. B. Shawyer

“T. C. Johnson of Kansas.”

Sec. 3. The agreement to extend said Interstate Compact to Conserve Oil and Gas, and which the Governor of this State is hereby authorized and empowered to execute for and in the name of the State of Texas shall be in substance as follows:

“It is hereby agreed that the Interstate Compact to Conserve Oil and Gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, be and the same is hereby extended for a period of two (2) years from its date of expiration (September 1, 1939), this agreement to become effective when executed by any three (3) of the States of Texas, Oklahoma, California, Kansas, and New Mexico, and consent thereto is given by Congress.”

Sec. 4. The Governor of Texas is authorized and empowered for and on behalf of the State of Texas to determine if and when it shall be for the best interest of the State of Texas to withdraw from said Compact upon sixty (60) days notice as provided by the terms of the Compact. In the event he shall determine that this State should withdraw from said Compact, he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the



withdrawal of the State of Texas from said Compact. Acts 1939, 46th Leg., Spec.L., p. 527.

<sup>1</sup> Article 6008 note.

Effective April 18, 1939.

Section 5 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

For text of Interstate Compact to Conserve Oil and Gas, as extended to September 1, 1939, see Vernon's Annotated Civil Statutes, art. 6008, note.

#### Complementary Laws

Extension to Sept. 1, 1939: Resolution of Congress Aug. 10, 1937, c. 572, 50 Stat. 617; Illinois, Laws 1935, p. 1418, § 6, as added by L.1937, p. 940 (Smith-Hurd Ill. Stats. ch. 104, § 24); Oklahoma, Laws 1936, Ex.Sess., p. 49, § 1 (52 Okl.St. Ann. § 201

note); Kansas, Laws 1937, ch. 264; New Mexico, Laws 1937, ch. 16, § 3.

Extension to Sept. 1, 1941: Resolution of Congress July 20, 1939, c. 337, 53 Stat. 1071; Illinois, Laws 1939, p. 795 (Smith-Hurd Ill.Stats. ch. 104, § 24); Oklahoma, Laws 1939, ch. 59, § 1 (52 Okl.St. Ann. § 201 note); Kansas, Laws 1939, ch. 228; New Mexico, Laws 1939, ch. 31.

#### Title of Act:

An Act providing for the execution of an agreement to extend the Interstate Compact to Conserve Oil and Gas; prescribing the form of the agreement; prescribing procedure for withdrawal from the Compact; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 527.

### Art. 6008a. Production and use of sour gas from common reservoirs for carbon black; definitions

Sec. 1. Where used in this Act the following words shall have the meaning given to them by Section 2, Chapter 120,<sup>1</sup> Acts Forty-fourth Legislature, Regular Session, to-wit: "Commission", "person", "common reservoir", "gas well", "oil well", "sour gas", "sweet gas", "natural gasoline", "cubic foot of gas", "casinghead gas".

<sup>1</sup> Article 6008.

#### Maximum daily withdrawal for manufacture of carbon black; proration

Sec. 2. In any common reservoir in this State producing both sweet and sour gas, there shall never be produced from such common reservoir for utilization in carbon black manufacture, a maximum daily volume of sour gas from such gas wells in excess of seven hundred fifty million (750,000,000) cubic feet which daily volume of sour gas from gas wells shall be prorated by the Commission among all the sour gas wells in such reservoir so as to prevent cognizable and preventable drainage of gas from tracts of land in such sour gas producing area segregated as to surface position and common ownership on which such sour gas wells are located; provided that if the daily demand for sour gas from gas wells for utilization in carbon black manufacture is less than the daily maximum allowable hereinabove permitted, the total daily volume of gas from gas wells from such sour gas area for utilization in carbon black manufacture shall be equal to such daily demand which demand shall be determined by the Commission and shall be prorated among all the sour gas wells in such area as hereinabove provided.

If a lawful daily demand exists for sour gas from gas wells for purposes of utilization permitted by existing law, other than the manufacture of carbon black, such additional demand shall be added to such daily demand for carbon black manufacture as hereinabove set forth, which sum shall constitute the daily volume of sour gas from gas wells which may be withdrawn from such common reservoir for utilization. Such daily volume shall be prorated by the Commission among the sour gas wells in such area on the basis hereinabove set forth.

It shall be unlawful for any person to produce sour gas from any sour gas well in such reservoir in excess of the daily allowable production for such gas well as fixed by the orders and schedules of the Commission. The rate of production from any sour gas well shall be deemed to be the daily average rate of production for the calendar month.

**Hearings, determination; rules and regulations of Commission**

Sec. 2a. In administering the provisions of this law the Commission shall hold hearings, make determinations, and make and promulgate orders, rules and regulations as provided in Sections 12, 13, and 14 of Chapter 120,<sup>1</sup> Acts of the 44th Legislature, Regular Session. The Commission shall otherwise have the duty to make and promulgate any rule, regulation or order it may find necessary to carry out the provisions of this law, after notice and hearing for such purpose.

<sup>1</sup> Article 6008.

**Commingling of casinghead gas with sweet or sour gas, or of sweet and sour gas, without permit prohibited; regulation of use of gases**

Sec. 3. (a) In any common reservoir in this State producing both sweet and sour gas, it shall be unlawful for any person to operate a plant for the extraction of the natural gasoline content of gas in which plant casinghead gas is commingled with either sweet gas or sour gas, or both, or where sweet gas and sour gas are commingled, until such person secures from the Commission a permit authorizing the operation of such plant. It shall be the duty of the Commission to issue such permit when it shall appear that such plant is being operated, and the residue gas from same is and shall be disposed of, in accordance with the provisions of this section.

(b) Where any such plant in such common reservoir commingles casinghead gas with sweet gas or sour gas, or both, it shall not be lawful for the operator of such plant to blow, or permit to be blown, into the air any of the residue gas remaining after the gasoline content of such gas is extracted; provided, however, the operator of such plant shall be permitted to blow to the air such amount of residue gas from said plant as is determined by the Commission to be necessary in order to accomplish uninterrupted deliveries in required amounts to carbon black plants for carbon black manufacture.

(c) Where any such plant in such common reservoir commingles casinghead gas with sweet gas or where any such plant commingles sweet gas with sour gas, it shall be the duty of the Commission to ascertain the quantity of residue gas which is required to be used for fuel purposes in the efficient operation of the plant and also the quantity of residue gas which is required to be returned by the operator of such plant to the leases to which the plant is connected for use as fuel in the operation of such leases. The operator of such plant shall be required to utilize or cause to be utilized for one or more of the uses provided for sweet gas by existing law a quantity of the residue gas from such plant which is equal to the quantity of sweet gas which is taken into said plant for processing, less the extraction loss from such processing, but such operator shall not be credited with use of such residue for plant-fuel or lease-fuel operations in an amount in excess of the quantity of such residue gas found by the Commission to be necessary for the efficient operation of such plant and return to such leases for fuel for lease operations.

(d) The commingling in any such plant of casinghead gas with sweet gas or sour gas, or both, or of sweet gas with sour gas, except upon the conditions and requirements set forth in Section 3 of this Act,<sup>1</sup> is hereby declared to be unlawful. Whenever it shall be made to appear to the Commission that any such plant is operating in violation of any of the provisions of this section, it shall be the duty of the Commission to cancel the permit so issued to such plant, and it shall thereafter be unlawful for the operator of such plant to commingle either casinghead gas with sweet gas or sour gas or to commingle sweet gas and sour

gas in any such plant for the purpose of extracting the natural gasoline content thereof.

<sup>1</sup> This section.

**Hearings by Commission; notice; inspection of books and records; sworn reports**

Sec. 4. From time to time the Commission shall hold hearings, after notice to interested operators, for the purpose of hearing evidence, and to promulgate rules, regulations and orders to enforce the provisions of this law. In addition to the authority given by existing law, the Commission or its agents shall have the right to inspect the books and records of any person who is affected by the provisions hereof and to require sworn reports to be filed, such sworn reports to be filed from time to time as the Commission may find necessary. All rules, regulations and orders promulgated by the Commission under the terms of this law shall be deemed prima facie valid.

**Penalty; injunction and prohibition**

Sec. 5. Any person violating any of the provisions of this Act shall be liable to a penalty not to exceed One Thousand (\$1,000.00) Dollars for each offense and each day's violation shall constitute a separate offense. Such penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the Attorney General in Travis County or in the county where the violation occurred. Any and all violations, and threatened violations, of this Act may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought, and in such cases the court shall issue such writs or injunction, prohibitory or mandatory, as the facts justify.

**Appeals to courts**

Sec. 6. Any person affected thereby may sue to test the validity of any rule, regulation or order promulgated by the Commission under this Act in the same manner, upon the same conditions, and to the same court or courts, as prescribed for suits testing the validity of rules, regulations and orders of the Commission promulgated under the general oil conservation statutes of this State.

**Repeal of conflicting laws; provisions cumulative**

Sec. 7. All laws or parts of laws in conflict with any of the provisions of this Act are hereby repealed; but where same are not in conflict the provisions of this Act shall be cumulative of existing laws.

**Partial invalidity**

Sec. 8. If any clause, sentence, provision or section of this Act should for any reason be held to be invalid or unconstitutional, it shall not affect in anywise the remaining parts of this Act and such remaining parts shall remain in full force and effect. Acts 1937, 45th Leg., p. 746, ch. 367.

**Art. 6049e. Definitions**

**Effective period**

Sec. 20. The provisions of this Act shall end and terminate September 1, 1941. As amended Acts 1937, 45th Leg., p. 17, ch. 15, § 1; Acts 1939, 46th Leg., p. 500, § 1.

Effective May 8, 1939.

Section 2 of the amendatory Act of 1939 provided that all of the other Sections of

said Chapter 76 shall remain and continue in full force and effect. No offense committed against, and no liability, penalty, or for-

feiture, either civil or criminal, incurred on account of a violation heretofore of any or all of the provisions of said Chapter 76, and said amendment thereof, or any rules, regulations, or orders issued pursuant thereto, shall be discharged or affected by the amendment of Section 20 of said Act as so amended, but prosecutions and suits, and such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if said Section 20,

and said amendment thereof, had read in its original enactment the same as provided for in this Act, and the procedure prescribed in said Chapter 76 or in any other applicable existing laws shall be followed in all prosecutions and suits, now pending or hereafter instituted on account of such offenses, liabilities, penalties, or forfeitures. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

## NATURAL GAS

### Art. 6053. Regulation of utilities

The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or Commissioners precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any County or District Attorney in any county wherein such business or any part thereof may be carried on. As amended Acts 1937, 45th Leg., p. 737, ch. 364, § 1; Acts 1939, 46th Leg., p. 501, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1939

declared an emergency and provided that the Act should take effect from and after its passage.

### Art. 6053a. Investigation and regulation of use of malodorants

Sec. 2. In addition to the duties and powers of the Commission hereinabove set forth, it is empowered and it shall be its duty to investigate the use of malodorants by persons, firms, or corporations engaged in the business of handling, storing, selling, or distributing natural and liquefied petroleum gases, including butane and other odorless gases, for private or commercial uses, or supplying the same by pipe lines or otherwise, to any public building or buildings, or to the general public, and the Commission is empowered to require such persons, firms, or corporations to odorize such gas by the use of a malodorant agent of such character as to indicate by a distinctive odor the presence of gas; such malodorant agent so required to be used, however, shall be non-toxic and non-corrosive and not harmful to leather diaphragms in gas equipment, the method of its use and containers and equipment to be

used in connection therewith to be under the direction of and as approved by the Railroad Commission of Texas; the Commission having full power and authority to prescribe such rules and regulations as in its wisdom may be deemed necessary to carry out the purposes of this Act. Nothing herein contained shall apply to gas transported out of the State of Texas.

**Equipment for storing and dispensing liquefied petroleum gases**

Sec. 2a. After the effective date of this Act all containers and pertinent equipment installed for use in this State for the storage and dispensing of liquefied petroleum gases for the purpose of providing gas for industrial, commercial, and domestic uses, shall be designed, constructed, equipped, and installed as specified under the published regulations of the National Board of Fire Underwriters for the design, installation, and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases as recommended by the National Fire Protection Association effective July, 1937, a copy of said regulations known as National Board of Fire Underwriters Pamphlet No. 58 being on file with the Gas Utilities Division of the Railroad Commission of Texas. All containers for the transportation of liquefied petroleum gases over the highways of this State, shall be designed, constructed, and operated in accordance with the published regulations for the design, construction, and operation of automobile tank trucks and tank trailers for the transportation of liquefied petroleum gases as adopted by the National Board of Fire Underwriters and the National Fire Protection Association in the year 1935, and as amended in 1937, a copy of which regulations are on file with the Gas Utilities Division of the Railroad Commission of Texas.

In the manner provided in Section 4 of this Act, the Railroad Commission of Texas shall have full power and authority to adopt and promulgate such rules and regulations as may be hereafter adopted and published by the National Board of Fire Underwriters and/or the National Fire Protection Association for the design, installation, construction, and operation of containers and equipment used in connection with the storage, handling, and dispensing of liquefied petroleum gases. Containers subject to the regulations of the Interstate Commerce Commission and containers which are owned or used by the Government of the United States of America are excepted from the provisions of this Section. Provided, however, that nothing herein shall be construed to alter, modify, or amend the Motor Carriers Law of the State of Texas. The Department of Public Safety of the State of Texas shall cooperate with the Railroad Commission of Texas in the enforcement of the provisions of this Act:

**License to manufacture, sell, or install apparatus; license to handle or transport liquefied petroleum gas; Railroad Commission's powers**

Sec. 2b. (1) No person, firm or corporation shall, after the effective date of this Act, engage in this State in the manufacture and/or assembly, sale or installation of any apparatus to be used in this State for the storage and/or dispensing of liquefied petroleum gas or to be used for any of the purposes enumerated in Section 2a hereof, or engage in the handling and/or transportation of liquefied petroleum gas over the highways of this State for use in any such apparatus, without having first obtained from the Railroad Commission of Texas, under the provision of this Act a license so to do. Applications for such licenses

shall be in writing and shall contain such information as the Commission shall prescribe.

(2) For the purpose of defraying the expenses of administering this Act, each person, firm, association, corporation, or manufacturer engaged in the manufacture and/or assembly and sale of any apparatus to be used for the storage and/or dispensing of liquefied petroleum gas, or engaged in the business of transporting or dispensing liquefied petroleum gas, and/or the sale and/or installation of any apparatus for the storage and/or dispensing of liquefied petroleum gas, shall at the time of issuance of such license, and annually thereafter on or between September 1st and September 15th of each calendar year pay to the Railroad Commission a special fee of Twenty-five Dollars (\$25). If the license here provided for is issued after the month of September of any year, the fee shall be prorated to the remaining portion of the year to August 31st following, but in no case less than one-fourth of the annual fee.

(3) No license shall be issued to any person, firm, association, corporation or manufacturer engaged in the manufacture and/or assembly and sale of any apparatus to be used for the storage and/or dispensing of liquefied petroleum gas, or engaged in the business of transporting or dispensing liquefied petroleum gas, and/or the sale and/or the installation of any apparatus to be used in this State for the storage and/or dispensing of liquefied petroleum gas unless such licensee shall first file with the Commission a bond in the sum of Two Thousand Dollars (\$2,000) with two (2) or more good and sufficient sureties, which bond shall be approved by the County Clerk of the county of the residence of such licensee, certifying that the sureties thereon are solvent and own property in excess of the exemptions allowed by the Constitution and laws of this State, subject to execution for more than the face amount of said bond; all such bonds shall provide that the obligor therein will pay, to the extent of the face amount thereof, all judgments which may be recovered against such licensee, based on claims for loss or damages for personal injury or loss of or injury to property occurring during the term of such bond and proximately caused by any violation, by said licensee, of the terms of this Act or any orders or rules promulgated by the Commission as authorized by this Act. Should the Commission determine that for any reason any such bond has been impaired to the extent of fifty (50) per cent of the penal sum named therein or the sureties thereon have become insolvent, the Commission may, by written notice, demand the filing of a new bond. Failure to submit a new bond to the Commission within twenty (20) days after the issuance of such notice shall ipso facto forfeit and cancel the license theretofore issued to any such licensee.

(4) The Commission shall have the power and authority, and it shall be its duty, to cancel the license of any licensee if it shall appear to the Commission, upon hearing as herein provided that such licensee has violated or failed to comply with any provision of this Act.

(5) Upon receipt of written complaint, in such form as it may prescribe, from one of its own authorized representatives stating that a licensee hereunder has violated or failed to comply with any of the provisions of this Act, the Commission is authorized and empowered and its duty shall be to hold a hearing under the provisions of this Act, and under such rules and regulations not inconsistent therewith as the Commission may prescribe, to consider such complaint. If at such hearing the Commission finds that such licensee has violated or failed to comply with any of the provisions of this Act, then the Commission shall revoke or suspend such license as it may find the ends of justice will

be better subserved. The Commission is authorized and empowered to investigate on its own motion any matters pertaining to the subject of this Act, and shall have the power to hold such hearings as it may deem necessary therefor, to summon and compel the attendance of witnesses, to require the production of any records or documents deemed by it to be pertinent to the subject matter of any investigation and to provide for the taking of depositions of witnesses under such rules as it may prescribe.

(6) Notice of any hearing, and of the time and place thereof shall be given by registered mail not less than ten (10) days exclusive of the day of mailing before such hearing addressed to all parties whom the Commission may deem to be interested in the subject matter of such hearing. Any licensee against whom a complaint has been filed shall be notified of the hearing on such complaint as herein provided, and shall have the right to appear at such hearing, file answer, introduce evidence, and be heard both in person and by counsel.

(7) At the conclusion of any hearing held to consider a complaint filed against any licensee hereunder, the Commission shall enter its findings and judgment in writing, and the same shall be recorded in a permanent record to be kept by the Commission, and a copy thereof shall be furnished to the licensee complained against. Any licensee whose license is cancelled or suspended by the Commission, may within thirty (30) days after such cancellation or suspension, and not thereafter, file an action for reinstatement against the Commission in the District Court of the county of the residence of the licensee. If any licensee whose license has been cancelled or suspended by the Commission shall, within ten (10) days after the receipt of information of such cancellation or suspension, give notice in writing to the Commission of his intention to file such suit, the action of the Commission in suspending or cancelling such license shall be suspended for a period of thirty (30) days, but unless suit shall be filed within such time, the action of the Commission shall be final. If suit shall be filed against the Commission to reinstate such license within such time, the action of the Commission shall remain suspended until the validity of the license in question shall be determined by the Court in said suit.

(8) All fees received by the State from licenses issued under this Act shall be made available to the Railroad Commission for use in paying the legitimate expenses incurred in administering and enforcing the provisions of this Act, and for no other purpose; provided, however, that any excess funds remaining at the end of each two-year period shall go to the General Fund.

#### **Penalty; suit for collection**

Sec. 3. The failure of any person or persons, firm or corporation, municipal or otherwise, or any association engaged in manufacturing, distributing, storing, or handling such gases in this State, or manufacturing, selling, installing, using, fueling, or refueling such containers and pertinent equipment as set out in this Act, within sixty (60) days after the receipt of any order of the Commission, to comply fully with this Act or any such order, rule, or regulation, shall be a violation of this Act, subjecting such person, or persons, and the officers and executives of such named concerns to a penalty of One Thousand Dollars (\$1,000) for each day that they shall fail to comply with such Act; and the Attorney General is empowered to bring suit for the collection of the same in the District Court of Travis County.

**Notice of proposed rules and regulations; hearing on objections**

Sec. 4. Before the adoption or promulgation of any orders, rules, and regulations affecting the liquefied petroleum gas industry under the terms and provisions of this Act, the Railroad Commission shall give ten (10) days notice to all licensees embraced within this Act, by mailing to such licensees a copy of the orders, rules and regulations which the Commission proposes to adopt and promulgate, which notice shall state the time and place when the Railroad Commission will hear and consider any objections to any such orders, rules and regulations, and any person, firm or corporation affected by such orders, rules and regulations shall have the right to file written objections thereto and be heard in person or by counsel, and after such hearing the Railroad Commission shall, in its discretion, adopt and promulgate any such orders, rules and regulations as published in such notice, or shall make such amendments and modifications thereof as the Railroad Commission shall deem just and equitable, and if, as and when any such orders, rules and regulations are finally adopted, the Railroad Commission shall, within ten (10) days thereafter, cause the same to be published in at least three (3) newspapers of general circulation throughout the State, and a copy thereof to be mailed to each licensee hereunder.

**Powers of Railroad Commission not enlarged except as specifically provided; partial invalidity**

Sec. 5. Nothing herein contained in this Act shall ever be construed as enlarging or changing the powers and jurisdiction heretofore delegated to the Railroad Commission by the Acts of 1920, Thirty-sixth Legislature, Third Called Session, Chapter 14, except as herein specifically provided in Section 2a, 2b, and Section 4.

If any clause, provision, section or part of this Act shall be adjudged by any Court of competent jurisdiction to be invalid such judgment shall not invalidate any other term or provision hereof and the Legislature hereby declares its intention to reenact each and every clause, requirement, provision and part hereof independently of any such part so invalidated. Acts 1937, 45th Leg., p. 737, ch. 364, as amended Acts 1939, 46th Leg., p. 501, § 1.

Effective 90 days after June 21, 1939 date of adjournment.

Emergency section. See note under article 6053, ante.



## TITLE 103—PARKS

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| <p>1. STATE PARKS BOARD</p> <p>Art.<br/>6069a. Parkways and roads to park-sites on Buchanan and Inks Lakes, establishment of [New].</p> <p>6070c—1. Brazoria County coast line designated a state park [New].</p> <p>4B. BIG BEND STATE PARK</p> <p>6077d. State Park Board to execute quit claim deeds to record owners of property sold for taxes and acquired for parks where taxes not actually delinquent [New].</p> <p>4C. BIG BEND NATIONAL PARK [NEW]</p> <p>6077e. Creation of Big Bend National Park.</p> | <p>4D. QUINTANA STATE PARK [NEW]</p> <p>Art.<br/>6077f. Quintana State Park.</p> <p>4E. STEPHEN F. AUSTIN STATE PARK [NEW]</p> <p>6077g. Stephen F. Austin State Park.</p> <p>6. CITY PARKS</p> <p>6081f—1. Cities, towns and villages prohibited from establishing streets, alleys or thoroughfares through parks; exceptions [New].</p> |
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## 1. STATE PARKS BOARD

## Art. 6067. Creating Board

There is hereby created a State Parks Board of six members to be appointed by the Governor, whose terms shall be six (6) years from date of appointment, but in appointing the first Board he shall appoint two (2) members for two (2) years, two (2) members for four (4) years, and two (2) members for six (6) years. They shall serve without compensation, but shall be reimbursed for necessary traveling expenses and hotel bills out of State funds, except where localities pay such expenses. As amended Acts 1937, 45th Leg., p. 687, ch. 345, § 1.

## Art. 6068. Soliciting donations of park sites or recreational areas—Rejecting or transferring title where unsuitable—Reversion clauses

The said Board shall solicit donations to the State of tracts of land, large or small, to be used by the State for the purpose of public parks and/or recreational areas, and said Board is hereby authorized to accept in behalf of the State the title to any such tract or tracts of land, or, where the site proposed is not deemed suitable for a State Park by the State Parks Board, to reject or refuse title so that it shall not vest in the State, or if title to a site has become vested in the State for park purposes and the site is deemed unsuitable for a State Park by the State Parks Board, whether the United States of America has undertaken the development of any site in which title to same is now vested in the State for park purposes, the Board is hereby authorized and empowered to transfer title to another State Department or institution wishing the land, or where the land has been donated by a city or county or other donor, to transfer title to such city or county or other donor where they wish the site returned to them, or where the United States of America has undertaken the development of any site in which title to same is now vested in the State for park purposes to transfer title to the United States of America, or where the deed to the State Parks Board contains a reversion clause providing that title shall revert to the donor when not used for park purposes, to declare that the park is unsuitable for State Park purposes and that title has reverted to the grantors; provided that in all instances where the Board acts under the au-

thority of this statute, it must do so by a two-thirds (2/3) vote of the members of the Board, and providing that the Chairman of the Board shall sign all instruments authorized under this Act. As amended Acts 1937, 45th Leg., p. 360, ch. 174, § 1; Acts 1939, 46th Leg., p. 516.

Effective June 30, 1939. Act should take effect from and after its passage.  
Section 2 of amendatory Act of 1939 declared an emergency and provided that the

#### Art. 6069. Duty of Board.

Said Board shall make investigations of any tract or tracts of land, of any size whatsoever, in the State with a view of determining whether the same is suitable for public park purposes, and, the terms on which it can be acquired; and shall report the result of their investigations, together with their recommendations and findings to each regular session of the Legislature, for such action as the Legislature may take. The purpose of this law is to initiate a movement looking to the establishment eventually of a system of State Parks for the benefit of the people, secured either by donation or purchase, or established on any land owned by the State available for such purpose. The said Board is especially directed to inspect the Davis Mountains in Jeff Davis County, to determine the feasibility of same as a park that might be made a National Park. If said Board should conclude that the Davis Mountains area is feasible as a great park, they are hereby authorized to outline the said park; take options or easements and outline a policy to finance the said Davis Mountains area as a park. Any options, easements or tentative deals that are made in regard to said Davis Mountains Park shall be subject to the action of the Legislature and shall not be binding on the State until the Legislature shall approve the action of the Parks Board.

It shall further be the duty of said Board to arrange for or employ a keeper in each of the State Parks under the control of said State Parks Board, who shall be clothed with all the powers and authority of a peace officer of the county, for the purposes of caring for and protecting the property within said parks. As amended Acts 1937, 45th Leg., p. 360, ch. 175, § 1.

#### Art. 6069a. Parkways and roads to park-sites on Buchanan and Inks Lakes, establishment of

Section 1. That the State Parks Board be and it is hereby authorized and directed to acquire, construct and maintain parkways, roadways, roads, bridges and trails from public roads and highways to park-sites located on and accessible to the waters of Buchanan and Inks Lakes in Burnet, Travis, Llano, Lampasas, Williamson and San Saba Counties, which park-sites may either be conveyed to the State Parks Board or owned by the Lower Colorado River Authority and dedicated to public use for park purposes.

Sec. 2. The purpose of this Act is to authorize and direct the State Parks Board to acquire rights of way for parkways and roads, either by purchase, gift or condemnation, and to build, construct and maintain roads, bridges and trails from existing public roads and highways to sites on Buchanan and Inks Lakes in such manner as in the opinion of the Board may best make the waters of such lakes accessible to the general public; and to this end the State Highway Commission is hereby authorized and directed to cooperate fully with the Board, and the Board is authorized and directed to cooperate with and to match funds with any governmental agency, State or Federal, and to sponsor any State or Federal project, and to enter into such contracts and agreements

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

in connection therewith as to the Board may seem proper and expedient. Acts 1939, 46th Leg., p. 517.

Effective 90 days after June 21, 1939, date of adjournment.

Section 3 of the Act of 1939 made an appropriation of \$12,500 to carry out purposes of act.

Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the State Parks Board

to acquire, build and construct parkways, roads, bridges and trails to park-sites on Buchanan and Inks Lakes in Burnet, Travis, Llano, Lampasas, Williamson and San Saba Counties; authorizing the Board to cooperate and match funds with other State and Federal agencies; making an appropriation to carry out the terms of this Act; and declaring an emergency. Acts 1939, 46th Leg., p. 517.

**Art. 6070c—1. Brazoria County coast line designated a state park**

Section 1. That the Brazoria County Coast between high and low tides, from the Galveston County line on the East to the Matagorda County line on the West, be hereby designated and declared a Texas State Park and dedicated to the general public for use as a Texas State Park, under the supervision of the Texas State Parks Board.

Sec. 2. Provided that nothing in this statute shall be interpreted as transferring to the State Parks Board anything other than those rights which the State of Texas has to all lands on the coast lying between high and low tides. Acts 1939, 46th Leg., p. 526.

Effective May 3, 1939.

Section 3 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act declaring and designating the Brazoria County coast line a State Park and dedicating it to the general public for use as a Texas State Park, and declaring an emergency. Acts 1939, 46th Leg., p. 526.

**4B. BIG BEND STATE PARK**

**Art. 6077c. Creation of Big Bend State Park**

Sec. 4. The Texas Canyons State Park, created as one of the State Parks of Texas, by House Bill No. 771, of the Regular Session of the Forty-third Legislature,<sup>1</sup> is hereby renamed Big Bend State Park, and said Big Bend State Park shall consist of the lands described in said Act, and other lands as described in Section 1 of this Act, or falling within the boundaries of the area designated in a survey by the National Park Service as a proposed Big Bend National Park, more particularly described as follows:

Beginning on the international boundary line at a point on the Rio Grande River at latitude 29° 20' and longitude 102° 53', thence on a line which bears N. 29° 0' W. a distance of 1.75 miles approximately to B. M. (3940), thence N. 49° 0' W. a distance of approximately 6.75 miles to B. M. on Sue Peaks, thence N. 18° 0' W. approximately 11.8 miles to an intersection with latitude 29° 35' and longitude 100° 02½', thence N. 52° 30' W. an approximate distance of 9.4 miles to a point which is latitude 29° 40' and longitude 103° 10', thence due north on longitude 103° 10' a distance of ½ mile, thence due west a distance of ½ mile, thence due south ½ mile to latitude 29° 40', thence S. 5° 15' E. an approximate distance of 5.8 miles to a point which is latitude 29° 35' and longitude 103° 10', thence due south on longitude 103° 10' to a point on said longitude line 2 miles south of latitude 29° 30', thence S. 83° 30' W. an approximate distance of 13.7 miles to B. M. (4405), thence S. 42° 30' W. an approximate distance of 20.6 miles to B. M. (2316), thence N. 6° 30' W. about 9½ miles to the international boundary line on the Rio Grande River, thence following the international boundary line along

the river in a general easterly direction to the point of beginning, containing approximately 736,000 acres. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1875, ch. 9, § 1.]

<sup>1</sup> Article 6077b.

Effective Oct. 26, 1937.

Section 4 of the amendatory act of 1937

declared an emergency and provided that the act should take effect from and after its passage.

Sec. 5-A. The Legislature of the State of Texas hereby withdraws from sale and lease all unsold Public Free School land situated in Brewster County lying north of North latitude 29° 25', which is included in the area set out as the proposed Big Bend National Park, as described in Section 4 of this Act, as amended. [As added Acts 1937, 45th Leg., 2nd C.S., p. 1875, ch. 9, § 2.]

Effective date and emergency section.

See note under article 6077c, § 4 of this title.

Sec. 6-A. The Texas State Parks Board is hereby authorized and empowered to accept for park purposes any and all lands within said area that may be offered or conveyed to it by any individual, group of individuals or corporation, private or municipal, having title to such land. The Texas State Parks Board is also authorized to accept any and all donations of funds or property that may be made to it for the purchase of lands within this area, and is further authorized to use said monies or property so donated in acquiring title to lands within this area, and to pay for such lands and the cost of acquiring same, out of said fund, such sums as in its discretion it may deem advisable. Provided, however, that no commission shall be paid to anyone in the acquisition of said land. That the State Parks Board shall place any and all funds so received by it in a special fund to be used for the sole and only purposes provided herein. The Texas State Parks Board is also hereby authorized and empowered without condemnation proceedings, or purchase through condemnation proceedings, or by gift or donation, to acquire lands within the foregoing area not now owned by the State of Texas, to be used for park purposes. Said Board is hereby vested with the power of eminent domain, and in the exercise of said power shall have the right to condemn for park purposes within the said area, and may institute, maintain and prosecute suits in the name of the State of Texas, for that purpose following the procedure applicable to the condemnation of lands by counties or by railroads or any other method authorized by law, and it is hereby made the duty of the Attorney General or the County or District Attorneys of Brewster County, Texas, to aid and assist the Board in the institution and prosecution of condemnation suits within said area. [As added Acts 1937, 45th Leg., 2nd C.S., p. 1875, ch. 9, § 3.]

Effective date and emergency section.

See note under article 6077c, § 4 of this title.

Art. 6077d. State Park Board to execute quit claim deeds to record owners of property sold for taxes and acquired for parks where taxes not actually delinquent

The Texas State Parks Board shall execute quit-claim deeds to any and all lands being and situated in the Big Bend National Park or the Big Bend State Park in Brewster County, which lands were sold for taxes and were acquired by the State of Texas for park purposes under such tax sales under the terms and provisions of Chapter 100, Acts of the First Called Session of the Forty-third Legislature to the record

owners thereof at the time of such tax sales in all cases where the taxes on such lands were not actually delinquent, and in which cases the original owners can produce valid tax receipts or a tax certificate from the Tax Collector of Brewster County showing that all taxes on the lands were paid each year in accordance with the laws of this State in the required time and were not actually delinquent. Acts 1939, 46th Leg., p. 519, § 1.

Effective June 7, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act directing the Texas State Parks Board to execute quit-claim deeds to lands situated in the Big Bend Park in Brewster County which were sold for taxes and ac-

quired by the State for park purposes under the terms of Chapter 100, Acts of the First Called Session of the Forty-third Legislature, to the original owners in cases where the taxes were not actually delinquent, and where tax receipts or tax certificates can be produced showing payment of such taxes; and declaring an emergency. Acts 1939, 46th Leg., p. 519.

#### 4C. BIG BEND NATIONAL PARK [NEW]

##### Art. 6077e. Creation of Big Bend National Park

Section 1. That when the title to the following described lands situated in Brewster County, Texas, shall have become vested in the State of Texas for park purposes under the terms of this Act or any previous Act or Acts or that have been acquired or that have become vested under any previous Act or Acts, such lands shall be and are hereby established, dedicated and set apart as a public park for the benefit and enjoyment of the people and shall be known and designated as the "Big Bend National Park" which area is approximately defined by the following metes and bounds:

Beginning at a point on the north bank of the Rio Grande River marked by a wooden monument painted white, about six feet high, and located at Long. 102° 50' 47"; Lat. 29° 22' 09"

Thence: N 65° 20' W approximately 9.1 miles to B. M. 5857 on Sue Peaks;

Thence: N 18° 0' W approximately 11.8 miles to a point at Long. 103° 21½'; Lat. 29° 35';

Thence: N 52° 30' W approximately 9.4 miles to a point at Long. 103° 10'; Lat. 29° 40';

Thence: N ½ mile;

Thence: W ½ mile;

Thence: S ½ mile to a point ½ mile west of Long. 103° 10'; Lat. 29° 40';

Thence: S 5° 15' E approximately 5.8 miles to a point at Long. 103° 10'; Lat. 29° 35';

Thence: S approximately 7.8 miles;

Thence: S 83° 30' W approximately 13.7 miles to B. M. 4405;

Thence: S 42° 30' W approximately 20.6 miles to B. M. 2316;

Thence: N 82° 30' W approximately 9.5 miles to a monument similar to the one described at the point of beginning and located on the N. bank of the Rio Grande River at Long. 103° 46' 17"; Lat. 29° 14' 48";

Thence: Following the international boundary line along the Rio Grande River in a generally easterly direction to point of beginning, containing approximately 788,000 acres.

Provided, however, in the event it should prove advantageous to the State of Texas in acquiring land within this area to include other and adjoining lands than that comprised within the foregoing boundaries,

then it will be permissible under this Act to acquire such additional lands in such amounts just so the total amount purchased or acquired in said area does not exceed one million acres.

Sec. 2. The Texas State Parks Board is hereby empowered and authorized to carry out the purposes and provisions of this Act and to employ such employees or assistants as may be necessary from time to time for the accomplishment of the provisions herein set forth. That the members of said Parks Board shall not receive any additional compensation for their services, except to be reimbursed for all necessary and actual traveling expenses incurred in carrying out the provisions of this Act.

Said Board is hereby authorized and empowered to acquire either by purchase or condemnation proceedings, or by gift or donation lands within the foregoing area not now owned by the State of Texas or that is not now owned by the State of Texas for park purposes, said land so acquired to be used only for park purposes. Said Board is hereby authorized and empowered to accept for park purposes any and all lands within said area that may be offered or conveyed to it by any individual, group of individuals or corporation, private or municipal, having title to such land. The Texas State Parks Board is also authorized to accept any and all donations of funds or property that may be made to it for the purchase of lands within this area, and is further authorized to use said monies or property so donated in acquiring title to lands within this area, and to pay for such lands and the cost of acquiring same, out of said fund, such sums as in its discretion it may deem advisable. Provided, however, that no commission shall be paid to anyone in the acquisition of said land. That the State Parks Board shall place any and all funds so received by it in a special fund in the State Treasury to be used for the sole and only purpose provided herein. Said Board is hereby vested with the power of eminent domain, and in the exercise of said power shall have the right to condemn for park purposes within the said area, and may institute, maintain and prosecute suits in the name of the State of Texas, for that purpose following the procedure applicable to the condemnation of lands by counties or by railroads or any other method authorized by law, and it is hereby made the duty of the Attorney General or the County or District Attorneys of Brewster County, Texas, to aid and assist the Board in the institution and prosecution of condemnation suits within said area. That all land acquired by said Board shall be for the use and benefit of the State of Texas for recreational park purposes and shall be under the supervision and control of the Texas State Parks Board.

Sec. 3. The Legislature of the State of Texas hereby withdraws from sale or lease all unsold public free school lands situated within the boundaries of the area described in this Act and which has been designated as the Big Bend National Park and hereby transfers and conveys said land from the State Public School Fund to the State of Texas for park purposes only, and upon payment being made for said land as hereinafter set out the title thereto shall vest in the State of Texas for park purposes only, and said land shall become a part of the Big Bend National Park. Said land is hereby valued at the sum of one dollar per acre which amount shall be paid therefor to the State Treasurer of the State of Texas to be credited to the State Public School Permanent Fund as consideration for said lands and in lieu of said lands. Said lands hereby transferred and conveyed are conveyed in fee simple title without any mineral reservation. The amount of the consideration for said conveyance of said Public School lands is to be paid out of any appropriation hereinafter made in this Act, or that may hereafter be made for said

purpose in any other Act or Acts or from any gift or donation of funds that may be made to the State Parks Board for the purchase of land within the area that has been designated by this Act as the Big Bend National Park. The Commissioner of the General Land Office shall prepare a list of the lands now owned by the State Public School Fund situated within this area and which has not heretofore been transferred or conveyed by the provisions of Chapter 100, Acts First Called Session of the Forty-third Legislature, and shall deliver one copy to the Texas State Parks Board and shall certify and furnish to the State Treasurer of the State of Texas a copy of said list showing the number of acres and a proper description thereof, and on the basis of said certificate the State Treasurer is hereby authorized to make proper settlement, credits, and transfers of monies from the General Fund of the State of Texas hereby appropriated to the State Public School Fund, and to make proper settlement and credits from payment received from the Texas State Parks Board out of any donations or gifts of monies made to said Board to the State Public School Fund for the purpose of purchasing said school lands for park purposes. That the Texas State Parks Board is hereby authorized and empowered in conjunction with the State Treasurer to designate the proper amount of acreage contained in said certificate in accordance with the payments so made in proportion to the amount paid therefor.

Sec. 4. That where the mineral estate has been severed from the surface estate in Public Free School lands situated within the boundaries of the area which has been designated herein as the Big Bend National Park, the Legislature of the State of Texas hereby transfers and conveys all the mineral estate now owned by the State of Texas for the benefit of its Public Free School Fund to the State of Texas for park purpose only and the title to said mineral estate shall vest upon the payment of the consideration hereinafter set out. The amount of consideration for said conveyance shall be at the rate of fifty cents per acre and shall be paid to the State Treasurer of the State of Texas to be credited to the Public School Permanent Fund as consideration for said mineral estates in said lands and in lieu of said mineral estates in said public school lands. That said consideration shall either be paid by a transfer to be made by the State Treasurer from the General Fund of the State of Texas to the Public School Fund from the appropriation hereinafter made in this Act or from appropriations that may be hereafter made for said purpose or may be made by proper credit to be made by the State Treasurer from payments that may be made by the Texas State Parks Board from the special fund established by this Act for purchase of lands situated within the area that has been designated as the Big Bend National Park. That upon the taking effect of this Act, the Commissioner of the General Land Office shall prepare a list of the lands in which the State of Texas owns only the mineral estate situated in the area designated as the Big Bend National Park herein for the benefit of the State Public School Fund and shall deliver one copy to the State Parks Board and one copy to the State Treasurer and shall certify to the State Treasurer the number of acres covered by said mineral estates and a proper description thereof which certificate shall form the basis for the credits to be made by the State Treasurer covering the transfer and conveyance of the mineral estates covered by this Act.

Sec. 5. That the Texas State Parks Board is hereby authorized to exchange any lands that have been acquired for park purposes under the provisions of Chapter 100, Acts First Called Session of the Forty-third Legislature, and that may have been acquired for park purposes under Chapter 95, Acts Regular Session Forty-third Legislature, that are situ-

ated outside of the boundaries of the area described and designated in this Act as the Big Bend National Park, for lands not yet acquired for park purposes within the area which has been described in this Act and designated as the Big Bend National Park.

Sec. 6. The Board in the purchase of lands within said area from private owners thereof, shall not pay a greater price than Two (\$2.00) Dollars per acre, exclusive of improvements thereon, for voluntary sales where the consideration is to be paid out of appropriations made from the General Fund of the State of Texas, provided this limitation shall not apply on lands acquired through condemnation proceedings. That all such lands shall be acquired in fee simple title without any reservation of any character whatsoever. That where lands have been sold by the State of Texas for the benefit of the State Public School Fund on the deferred payment plan and there are now outstanding balances due from the purchasers upon obligations executed for the purchase of said land and as a part of the consideration therefor, the Board shall place a value on the purchasers' equity therein and pay such purchaser or purchasers therefor not to exceed the amount of Two (\$2.00) Dollars per acre, exclusive of improvements where said consideration is to be paid out of appropriations made from the General Fund of the State of Texas, and to pay the State of Texas for the benefit of the Public School Fund the amount of unpaid balance due thereon. The limitation as to the amount that shall be paid per acre for the land shall not apply to payments that are to be made out of the special fund created by this Act but shall only apply to payments or part-payments to be made out of the appropriations payable out of the General Fund of the State of Texas.

Sec. 7. That all lands acquired by the State of Texas for park purposes under the provisions of Chapter 100, Acts First Called Session, Forty-third Legislature which is situated within the area herein defined and designated as the Big Bend National Park is hereby transferred and conveyed to the State of Texas for park purposes and shall be designated as the Big Bend National Park.

Sec. 8. The United States Government, through the Secretary of the Interior or any other Agency, is hereby authorized to acquire title, to hold, occupy and possess the area herein defined as the Big Bend National Park and the Governor of the State of Texas is hereby authorized to execute a deed of conveyance to the United States Government covering the area acquired under the terms of this Act as the Big Bend National Park for the use of the public for recreational park purposes, in consideration of the United States Government agreeing to establish and maintain said area as a National Park under an Act of Congress, being Public—No. 157, enacted by the Seventy-fourth Congress of the United States and to cede to the United States jurisdiction over said lands in conformity with the provisions of Article 5247, of the Revised Civil Statutes of Texas, 1925; reserving, however, to the State of Texas, the right to retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal, issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded as the area for the Big Bend National Park, in like manner and like effect as if no such cession had taken place; and, reserving further, to the State the right to levy and collect taxes on sales of products or commodities upon which a sales tax is levied in this State, and to tax persons and corporations, their franchises and properties, on land or lands deeded and conveyed under the terms of this Act; and reserving also, to persons residing in or on any of the land or lands deeded or con-



veyed under the terms of this Act to the United States Government the right to vote at all elections within the counties, in which said land or lands are located, upon like terms and conditions and to the same extent as they would be entitled to vote in such counties had not such lands been deeded or conveyed as aforesaid to the United States of America. Acts 1939, 46th Leg., p. 520.

Effective May 12, 1939.

Section 9 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act dedicating and establishing the Big Bend National Park in Brewster County, Texas, and defining the area of said park, granting powers of condemnation, and defining the duties and powers of the Texas State Parks Board in regard thereto, withdrawing from sale or lease, and transferring certain lands belonging to the State Public School Fund to the State of Texas for park purposes only, and providing a consideration therefor, and transferring and conveying certain mineral estates now owned by the State Public School Fund in said area to the State of Texas for park purposes only and providing a consideration for said transfer and conveyance; and authorizing the Board to make exchange of lands previously acquired for park purposes under

certain Acts lying outside the area defined by this Act for land lying within said area and fixing a maximum price that shall be paid by the Board for the purchase of land in said area where said consideration is to be paid out of appropriations from the General Fund of the State, and further providing that all lands acquired by the State for park purposes under Chapter 100, Acts First Called Session, Forty-third Legislature, within said area are to be transferred to the State of Texas for park purposes and to be designated as a part of the land dedicated herein as the Big Bend National Park, and providing that the United States Government may acquire title to said property within said area and authorizing a conveyance by the State of Texas to the United States Government for park purposes, reserving certain jurisdictional rights and privileges to the State, and declaring an emergency. Acts 1939, 46th Leg., p. 520.

#### 4D. QUINTANA STATE PARK [NEW]

##### Art. 6077f. Quintana State Park

Section 1. Whereas, the citizens of Freeport and Brazoria County have tendered to the Texas State Parks Board as a donation certain land in the town of Quintana, in Brazoria County, Texas, adjacent to the West jetty and bordering on the Gulf of Mexico, including all of Block Numbered Twenty-seven (27) B and the accretions thereto, all of Block Numbered Twenty-six (26) B and the accretions thereto, all of Block Numbered Twenty-eight (28) B, and all of Block Numbered Twenty-eight (28) C and the accretions thereto, according to the maps of said town of Quintana, aggregating about one hundred and twenty-five (125) acres of land, more or less, for the establishment and operation thereon of a State Park to be known as "Quintana State Park," and the Texas State Parks Board has adopted the following resolution, to-wit:

"WHEREAS, The citizens of Freeport, Texas, and Brazoria County are seeking to acquire certain lands on the Gulf of Mexico to be designated as a State Park, and improved by Convict Labor: and

"WHEREAS, Such a tract would provide a State Park with a sand beach and breakers;

"THEREFORE, Be it resolved by the Texas State Parks Board that the park site proposed by the Brazoria County workers be declared suitable for a State Park and be accepted when deeds and titles have been correctly prepared and given to the State Parks Board, and when all the conditions requisite to the establishment of a State Park have been met, and the Executive Secretary is charged with the duty of seeing that such conditions are complied with."

Sec. 2. The Legislature does hereby authorize and approve the acceptance by the Texas State Parks Board the donation of said land for the establishment and operation thereon of a State Park to be known as

"Quintana State Park," subject to compliance with the conditions set forth in the foregoing resolution of the Texas State Parks Board. Acts 1939, 46th Leg., p. 529.

Effective May 11, 1939.

Section 3 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act approving the Quintana State Park offered by the citizens of Brazoria County, and declaring an emergency. Acts 1939, 46th Leg., p. 529.

#### 4E. STEPHEN F. AUSTIN STATE PARK [NEW]

##### Art. 6077g. Stephen F. Austin State Park

Section 1. That the State of Texas accept title to said ground when conveyed in fee simple without reservations, conditions, or exceptions by San Felipe Park Association and Corporation of San Felipe de Austin, and dedicate it as a state park in commemoration of the historical events that have occurred at San Felipe de Austin, and agrees to beautify and protect the same; which said ground shall be under the care and direction of the Texas State Parks Board.

Sec. 2. The said land and grounds shall hereafter be known and styled "Stephen F. Austin State Park," and shall be under the care and direction of the Texas State Parks Board, which shall endeavor to improve, preserve, and protect the lands and property within said Stephen F. Austin State Park. Acts 1939, 46th Leg., p. 527.

Effective May 15, 1939.

Section 3 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Acts 1939, 46th Leg., p. 527, contained the following preamble:

"Whereas, It has been the policy of the State of Texas to acquire title to beautify and preserve certain historical spots in the State of Texas where the most memorable events occurred, which resulted in Texas' colonization and independence; and

"Whereas, Along this line the State has already acquired title to the Alamo property in San Antonio, the San Jacinto Battle Ground in Harris County, the site of Fannin Massacre in Goliad County, and numerous other sites of this type, with a view of making State parks, beautifying and preserving them, and by erecting monuments with suitable inscriptions thereon perpetuating the memory of the characters who made them historical spots; and

"Whereas, One of the most notable of such places is the town of San Felipe, originally known as San Felipe de Austin, where the capitol of the American Colonies in Texas was located until 1836; where the conventions of 1832 and 1833 were held; where the Consultation of 1835 that led to the Texas Revolution was held; where Stephen F. Austin, the Father of Texas, lived all of his life in Texas, with the exception of the last few months; where William Barrett Travis, Mrs. Jane Long, the Mother of Texas, David G. Burnet, R. M. Williamson, and other famous Texans lived prior to 1836; where one Texan was killed in a short battle between the Mexican and Texas forces; where Travis' im-

mortal message of 'Victory or Death' was received; home of Texas' first newspaper, the Gazette, founded in 1829, and the Telegraph and Register begun in 1835 as the official organ of the Texas Revolution; and

Whereas, About fourteen (14) acres of the original Five League Grant, upon which was located Comercio Plaza, is now owned and possessed by San Felipe Park Association, and approximately six hundred fifty (650) acres of land out of the original Five League Grant, lying along the Brazos River and to the north of Comercio Plaza, is owned and in the possession of the Corporation of San Felipe de Austin, said Corporation having received title to same from the Mexican Government through Stephen F. Austin in the year One Thousand Eight Hundred Twenty-four (1824) A.D.; and

"Whereas, From time to time this land which is so sacred to the people of Texas is being sold by said Corporation of San Felipe de Austin to various people and will not be available in the future for park purposes in the event the State of Texas does not at this time accept title to same and agree to manage, control, beautify, improve, and preserve same to the use of Texas citizens as a state historical park; and

"Whereas, San Felipe Park Association and Corporation of San Felipe de Austin, through their duly authorized officers, have offered to convey unto the State of Texas, without charge, the above lands, after a survey has been made to ascertain a correct description and acreage thereof, provided the State of Texas will dedicate the same for a public state park and will

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

agree to beautify and protect the same; therefore,"

**Title of Act:**

An Act to provide for acquiring and acceptance of title of about 14 acres of the original Five League Grant, from San Felipe Park Association and Corporation of San Felipe de Austin to about six hundred fifty (650) acres of land situated in

Austin County, Texas, and being a part of the original Five League Grant from the Republic of Mexico to the town of San Felipe de Austin; providing for management and control, beautifying and improving said land, the same to be designated by name as "Stephen F. Austin State Park"; and declaring an emergency. Acts 1939, 46th Leg., p. 527.

## 6. CITY PARKS

### Art. 6080. City parks

Acts 1939, 46th Leg., p. 525, § 1, reads as follows:

"The Commissioner of the General Land Office of the State of Texas is hereby authorized and directed to convey by proper instrument all right, title, and interest which the State of Texas has in and to the Blanco State Park in the City of Blanco, Blanco County, Texas, to the City of Blanco, Texas; said Park being the lands donated to and purchased by the State of Texas for the purposes of said Park, which instruments of conveyance are now on file in the office of the State Parks Board; said conveyance and transfer shall be for the consideration of the sum of One Dollar (\$1), which said sum shall be deposited

with the General Fund of the State of Texas, and said conveyance shall be conditioned upon the City of Blanco levying a tax for the proper maintenance of the Blanco State Park, and upon the failure of the City to continue the levying of such tax, the title to said Park shall revert to the State."

Sec. 2 of the act stated: "The fact that the State of Texas is the owner of the Blanco State Park, and the Legislature has not made appropriation of funds to improve, care for, beautify and supervise said Park, and that the same is now being allowed to deteriorate and become damaged," and was also the emergency clause.

Effective May 15, 1939.

### Art. 6081e. Condemnation or purchase by county or incorporated city of land for parks or playgrounds; cooperation with State Parks Board

#### Certain cities authorized to issue bonds and levy taxes

Sec. 2-b. That where a majority of the resident property taxpayers, being qualified electors of any city in this State having a population of not less than 1525 and not more than 1550 according to the last preceding Federal Census, and by any city having a population of not less than 4400 and not more than 4500 according to the last preceding Federal Census, voting on the proposition, having voted at an election held in such city in favor of the issuance of bonds of such city, and the levy of taxes upon taxable property therein for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the purpose of park improvements in and for such city, the canvass of said vote revealing such majority having been recorded in the minutes of the governing body of such city, and the governing body of such city, by ordinance or resolution adopted and recorded in its minutes, having authorized the issuance of such bonds, prescribed the date and maturity thereof, the rate of interest the bonds were to bear, the place of payment of principal and interest, and provided for the levy of taxes upon the taxable property in such city to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, each such election and all acts and proceedings had and done in connection therewith and in respect of such bonds and the levy of such taxes by the governing body of such city are hereby legalized, approved and validated; and power and authority is hereby expressly conferred upon the governing body of such city to adopt all orders, resolutions and ordinances and to do all and further acts necessary in the issuance or sale of such bonds, and such governing body is hereby ex-

pressly authorized and empowered to levy a direct general ad valorem tax upon all taxable property in such city for the purpose of paying the interest on and the principal of said bonds; provided, that the aggregate amount of bonds issued for park improvements shall never reach an amount where the tax of Ten (10¢) Cents on the One Hundred (\$100.00) Dollars valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity. [As added 1937, 45th Leg., 2nd C.S., p. 1866, ch. 3, § 1.]

Effective Oct. 21, 1937.

Section 2 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

**Art. 6081f—1. Cities, towns and villages prohibited from establishing streets, alleys or thoroughfares through parks; exceptions**

That from and after the effective date of this Act all cities, towns, and villages in the State of Texas are hereby prohibited from establishing or dedicating thoroughfares, public streets and/or alleys through any property now dedicated or used as a park or for public park purposes or that may hereafter be dedicated or used as parks or for park purposes, and which park or parks include land, the title to which is in the State of Texas on which is situated a building or buildings owned by the State of Texas and in the construction of which building or buildings the State has expended as much as Fifty Thousand Dollars (\$50,000), but this Act shall not apply to the campus of any educational institution or to the grounds of any eleemosynary institutions, provided, however, that driveways may be maintained in such parks for park purposes only and not as general thoroughfares, and provided further that such thoroughfares, streets, and/or alleys may be established only after the question of permitting such use has been submitted to a referendum vote of the people qualified to vote in such elections in such cities, towns, and villages and where said election has resulted in the majority having cast their vote for such use. When such election has been held and has resulted favorable to the opening of such thoroughfares, streets, and/or alleys then, and in that event and only in such event, shall the opening of such thoroughfares, streets, and/or alleys be lawful.

It being the purpose of this Act to prohibit the opening of thoroughfares, streets, and/or alleys in and through the parks located in the cities, towns, and villages of this State and such thoroughfares, streets, and/or alleys through such parks to be opened only after an election for that purpose has been approved by the legally qualified voters of such cities, towns, and villages. Acts 1939, 46th Leg., p. 530, § 1.

Effective May 8, 1939.

Section 2 of the act of 1937 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to prohibit cities, towns, and villages from dedicating or establishing thoroughfares or public streets and/or alleys through certain parks commonly known as amusement parks, which include land the title to which is in the State of Texas on which is situated buildings owned by the

State in the construction of which as much as Fifty Thousand Dollars (\$50,000) has been expended, unless and until approved by a majority vote of the qualified voters of such cities, towns and villages; providing the Act shall not apply to the campus of any educational institution or the grounds of any eleemosynary institution; and to prevent general vehicular traffic through same; and permitting cities, towns, and villages to otherwise regulate vehicular traffic in parks; repealing all laws and parts of laws in conflict; and declaring an emergency. Acts 1939, 46th Leg., p. 530.

## TITLE 104—PARTITION

### 1. PARTITION OF REAL ESTATE

Art. 6085. 6099, 3609 Where defendant is unknown

If the plaintiff, his agent, or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding such officer to summon such unknown owner or owners by making publication of the citation in some newspaper in the county where the writ issued, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, once each week for four (4) successive weeks previous to the return day of such process. When such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all such cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners. As amended Acts 1939, 46th Leg., p. 532, § 1.

Effective 90 days after June 21, 1939,  
date of adjournment.

Section 2 of the amendatory act of 1939  
declared an emergency and provided that  
the act should take effect from and after  
its passage.

## TITLE 105—PARTNERSHIPS AND JOINT STOCK COMPANIES

### CHAPTER ONE—PARTNERSHIP—LIMITED

Art. 6111. 6127, 3584 General and special partners

Such partnerships may consist of one or more persons, who shall be called the general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash a specific sum, or its equivalent in other property, as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him, or them, to the capital, in cash or other property, and in case other property than cash is contributed, the partner contributing same shall certify as to the cash value thereof and should it be determined in a suit, or suits, by a creditor, or creditors, that said property did not at the time of contribution, have the cash value placed thereon by said special partner, the said special partner shall be liable to the amount that said property lacked of having the value placed thereon by said partner. As amended Acts 1937, 45th Leg., p. 473, ch. 238, § 1.

Section 1a of the amendatory act of 1937  
provides that nothing therein shall be

construed to alter or amend Penal Code,  
Title 14, Chapter 7.

**Art. 6113. 6129, 3586 Formation of such partnerships**

The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.
4. The amount of capital which each special partner shall have contributed to the common stock, and if all, or a part of such capital, has been contributed in property other than cash, a description of said property and the location of same and the cash value placed thereon by partner contributing same.
5. The period at which the partnership is to commence, and the period at which it is to terminate. As amended Acts 1937, 45th Leg., p. 473, ch. 238, § 1.

See note to article 6111, ante.

**Art. 6116. 6132, 3589 Affidavits of general partner**

At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, have been actually and in good faith paid in cash, or in the property as described in the certificate of partnership. As amended Acts 1937, 45th Leg., p. 473, ch. 238, § 1.

See note to article 6111, ante.

**Art. 6122. 6138, 3595 Firm name**

The business of the partnership may be conducted under any name; provided, however, that if such name include any word or words other than the name or names of the general partners, there shall be added thereto the word "limited" or "ltd."; and if the name of a special partner is used as such name, or a part thereof, with his knowledge and consent, and is not followed by the word "limited" or "ltd.," such special partner shall be liable as a general partner with respect to all business transacted in that name. As amended Acts 1937, 45th Leg., p. 473, ch. 238, § 1.

See note to article 6111, ante.

**TITLE 106—PATRIOTISM AND THE FLAG**

Art.

6144cc. Audit of expenditures [New].

**Art. 6144b. Texas Centennial celebration**

Texas Coronado Quarto Centennial  
Commission

Acts 1939, 46th Leg., Spec.L., p. 522, § 1, effective April 18, 1939, read as follows: "That there is hereby created a Texas Coronado Quarto Centennial Commission, to be composed of five citizens of this State, to be selected by the Governor and to serve for a period of two years from and after their appointment, without compensation. The Commission shall act as an

agency of the State of Texas, and it shall be charged with the responsibility of causing appropriate public celebrations to observe and commemorate the four hundredth anniversary of the Coronado Expedition to the State of Texas, and it shall cooperate with similar agencies of the State of New Mexico in celebrations of like nature in that State. The Committee shall act as an agency of the State of Texas to receive, expend, and disburse any and all

funds appropriated by the Federal Government, as well as all donations and subscriptions from private individuals and municipalities, which shall be made for the purpose of defraying the necessary expenses of such celebrations. The funds so received shall be expended and disbursed in such manner as may seem to the Committee to best expedite the Centennial Celebration of the Coronado Expedition, to the end that the four hundredth anniversary

of this historical event may be observed in a manner commensurate with its importance. When the celebrations shall have been held, the said Commission shall file with the Governor of Texas a complete, verified account showing all monies coming into its hands, and a detailed statement of all expenditures, and such account and statement shall be open for public inspection."

**Art. 6144c. Texas Centennial Celebration; supplemental act**

Sec. 1a. That the unexpended balance of the Three Million (\$3,000,000.00) Dollars appropriation made in Section 1 of Chapter 174, Acts of the Regular Session of the Forty-fourth Legislature be and the same is hereby re-appropriated and re-allocated as provided in said section according to the unexpended balances remaining in each item of said allocation for the biennium ending December 31, 1938. The sums of money hereby re-appropriated are to be expended for the purposes and in the manner provided for in said Chapter 174, Acts of the Regular Session of the Forty-fourth Legislature. As added Acts 1937, 45th Leg., p. 641, ch. 314.

Sec. 3. That the Commission of Control created under the provisions of Section 3 of Chapter 174, Acts of the Regular Session of the Forty-fourth Legislature is hereby re-created to be composed of the nine (9) members that now compose said Commission under the Original Act, except that the place of the Speaker of the House of Representatives on said Commission shall be filled by the member of the House of Representatives from the 86th State Representative District. Vacancies arising on the Commission shall be filled by the authority making the first appointment under the original Act, or in the case of ex officio members of the Commission, to be filled by the officials' successors in office. Said Commission of Control is hereby authorized to perform all of the duties necessary to carry out the provisions and purposes of Chapter 174, Acts of the Regular Session, Forty-fourth Legislature and the powers and authorities of said Commission are extended for a sufficient period of time in order that it may accomplish these purposes. The Commission of Control for Texas Centennial Celebrations is hereby specifically authorized and directed to make application to the Federal Government for funds and to receive said funds to be expended by the Board of Control of the State of Texas as provided for in Section 6 of Chapter 174, Acts of the Regular Session of the Forty-fourth Legislature. [As amended Acts 1937, 45th Leg., p. 641, ch. 314, § 2.]

Sec. 18. The unexpended portion of the One Hundred Thousand (\$100,000.00) Dollars heretofore appropriated to the Centennial Commission is hereby re-appropriated to the State Board of Control in order to provide funds for the administration of this Act and as an expense fund for the use of said Board in the performance of the duties imposed on it. As amended Acts 1937, 45th Leg., p. 641, ch. 314, § 3.

Section 4 of the amendatory Act of 1937 is set out as article 6144cc, post. Section 5 declared an emergency.

**Art. 6144cc. Audit of expenditures**

It is hereby declared the intention of the Legislature that an audit be made of the expenditure of the funds appropriated under the provisions of House Bill No. 11,<sup>1</sup> Acts of the Regular Session of the Forty-fourth Legislature, and all funds appropriated hereby. Said audit shall be made

by the State Auditor or under his direction. It shall be the duty of such Auditor or those working under his direction to make such audit of the expenditure of funds appropriated under the provisions of House Bill No. 11, Acts of the Regular Session of the Forty-fourth Legislature and hereby appropriated as soon as practicable, and furnish the Legislature with a copy of said report. There is hereby appropriated out of the unexpended balance of said funds One Thousand (\$1,000.00) Dollars or so much as may be necessary for the purpose of making such audit. Acts 1937, 45th Leg., p. 641, ch. 314, § 4.

1 Article 6144c.

## TITLE 108—PENITENTIARIES

### 1. PRISON COMMISSION

Art.

6166x—1. Labor of prisoners—overtime allowance [New].

### 1. PRISON COMMISSION

#### Art. 6166x. Labor of prisoners

Labor of prisoners, overtime allowance, see article 6166x—1, post, and notes thereto.

#### Art. 6166x—1. Labor of prisoners—overtime allowance

Prisoners confined in the State Penitentiary shall be kept at work under such rules and regulations as may be prescribed by the general manager, with the consent and approval of the Prison Board, provided that no prisoner shall be required to work more than ten hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction from their sentence of double the hours so worked; and provided further that ten hours shall constitute a day to be deducted from his sentence. This "necessary and essential work" shall be subject to the recommendations or orders of the general manager. Sunday work on jobs approved by the general manager shall be considered as "necessary and essential work." A strict accounting of credit records of all overtime earned shall be kept by the man in charge of the unit on which the work is performed and completed; a report shall be rendered to the general manager each month, who shall approve all such overtime before it is placed to the credit of the inmate. The general manager shall, with the consent and approval of the Prison Board, have the power to designate certain fixed overtime hours which he considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless same is attested by the officer in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner, all commutation earned by such overtime work shall be subject to complete forfeiture. In going to and returning from work prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any pris-



oner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner, upon his admission to the prison, shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provisions of this Section, shall be dismissed from the service. This Act shall be retroactive and become effective as of June 1, 1938. Acts 1939, 46th Leg., p. 534, § 1.

Effective June 1, 1938.

Sec. 2 of the Act of 1939 provided that the fact that the Attorney General of the State of Texas has rendered an opinion which nullifies the existing overtime law of this State, and the further fact that there is no statute now covering the same, creates an emergency, an imperative public necessity, that requires the Constitutional law requiring bills to be read on three sev-

eral days before passage, be suspended, and it is so suspended, and this Act shall take effect from and after passage, and it is so enacted.

The title of this Act purported to amend Acts 1927, 40th Leg., p. 293, ch. 212, § 25, as amended by Acts 1929, 41st Leg., p. 435, ch. 229, § 1, incorporated in Rev. Civ.St. art. 6166x, but the body of the Act did not amend such prior Acts.

## 2. REGULATIONS AND DISCIPLINE

### Art. 6203a. Lease of oil and gas in prison lands

#### Bid filed in General Land Office

Sec. 8. If the Board shall determine that a satisfactory bid has been received from said oil and gas, it shall be filed in the General Land Office. Whenever the royalty shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of five years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate. As amended, Acts 1939, 46th Leg., p. 479, § 1.

Effective Feb. 17, 1939.

Section 2 of the amendatory act of 1939 read as follows: "Any lease providing for a five year primary term and heretofore entered into by the Board created by Senate Bill No. 29, Chapter 13, Acts Fourth Called Session Forty-first Legislature [Art. 6203a], shall not be considered terminated by failure to produce oil or gas within three years from the date of such lease, and any such lease is hereby confirmed and validated in so far and only in so far

as failure to produce oil or gas within three years from date thereof is concerned; and any such lease shall be in force and effect for five years from its date if otherwise in good standing and all other terms and conditions of such lease and the law applicable thereto have been heretofore and are hereafter met and carried out."

Section 3 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

## TITLE 109—PENSIONS

## 2. CITY PENSIONS

Art.  
6243e. Firemen's Relief Pension Fund [New].

## 3. OLD AGE ASSISTANCE

- 6243—2. Purpose [New].  
6243—3. Persons entitled to assistance [New].  
6243—4. State Board of Control as Texas Old Age Assistance Commission; compensation; expenses [New].  
6243—5. Qualifications for assistance [New].  
6243—6. Duties of Commission in determining eligibility of applicants for assistance [New].  
6243—7. Offices, records, equipment, money, etc., of prior Commission to be turned over [New].  
6243—8. Executive Director; qualifications; Chief Auditor; salaries; fidelity bonds [New].  
6243—9. Local administration; qualifications of employees [New].  
6243—10. Expenses of administration; limitation [New].  
6243—11. Applications for assistance; form; applications under prior act [New].

Art.

- 6243—12. Investigation of application by local administrative agency; order; review; hearing [New].  
6243—13. Amount of assistance [New].  
6243—14. Applications and beneficiaries under prior act; rights under this act not to be construed as vested; assistance grant inalienable; bankruptcy; gifts or contributions to fund [New].  
6243—15. Payment of assistance benefits; list of persons entitled to assistance [New].  
6243—16. Effect of federal assistance [New].  
6243—17. Assistance subject to amending or repealing act [New].  
6243—18. Construction of act [New].  
6243—19. Conviction as termination of assistance [New].  
6243—20. Repeal [New].  
6243—21. Partial invalidity [New].  
6243—22. Permanent Old Age Pension Fund; liquidation [New].  
6243—23. Warrants against Texas Old Age Assistance Fund; interest [New].

## 1. STATE AND COUNTY PENSIONS.

Art. 6205. 6267a To whom granted

Out of the Pension Fund created and maintained under the provisions of Article 6204 as amended, there shall be paid on the first day of each calendar month a pension in the amounts provided for in Article 6221 to every Confederate soldier or sailor whose application has heretofore been approved, and also those who came to Texas prior to January 1, 1928, and whose application shall hereafter be approved, and to their widows whose applications have heretofore been approved and also those who have been bona fide residents of this State since January 1, 1928, and whose application shall hereafter be approved and who were married to such soldiers or sailors prior to January 1, 1921, and who lived with such soldier or sailor continuously for at least ten (10) years immediately prior to the death of such sailor or soldier and to soldiers who, under the Special Laws of the State of Texas during the War between the States, served in organizations for the protection of the frontier against Indian raiders or Mexican marauders, and to soldiers of the militia of the State of Texas who were in active service during the War between the States, and to soldiers of the militia of any other Confederate State who were in active service during the War and who came to Texas at least ten (10) years prior to the approval hereafter of his application for a pension, and to soldiers appointed to official or other service in the State of Texas, requiring the carrying of arms during the War between the States, and all soldiers and sailors and widows of all soldiers and sailors eligible to be placed upon the pension rolls and participate in the distribution of the Pension Fund

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

of this State under any existing law or laws hereafter enacted; provided that no widow born since January 1, 1873, shall be entitled to a widow's pension; provided, that the widow of a Confederate Veteran born after January 1, 1873, but prior to January 1, 1875, who has lived continuously with her husband, who was a Confederate soldier or sailor, for a period of forty (40) years prior to his death shall be entitled to a pension under the terms of this Act; a widow entitled to a pension under this Act, but who remarries a man other than a Confederate soldier or sailor shall not be entitled to a pension, but shall not be barred from receiving a pension in the event she should be left a widow after such remarriage, so long as she remains a widow. Soldiers or widows who are over eighty-eight (88) years of age, who have been bona fide citizens of Texas since prior to January 1, 1930, shall be entitled to pensions under this Act, if otherwise pensionable. As amended Acts 1937, 45th Leg., p. 1318, ch. 485, § 1.

**Art. 6218. 6276 Fees limited**

Fees for assisting in collecting assistance limited, see P.C. art. 1720a.

**2. CITY PENSIONS**

**Art. 6235a—1. Retirement pensions in cities of 53,000 to 77,600**

Section 1. (a) The governing body of any incorporated city in this State having a population not less than 53,000 and not more than 57,000, according to the last preceding Federal Census, such cities being located in counties having a population not less than 77,600 and not more than 77,850, according to the last preceding Federal Census, in addition to other powers by it possessed, may by ordinance create a Municipal Retirement Board, as defined in this Act, to administer and supervise the receipts and disbursements of the employees' retirement fund authorized by this Act, and by such ordinance adopt a plan to pay retirement allowances to retire employees of such city as hereinafter specified.

(b) If any such ordinance shall provide for contributions to such retirement system by appropriation from the general funds of such city, and if such contributions shall constitute a debt incurred in any fiscal year to be paid after the end of such fiscal year, then in such events the question as to whether the governing body of said city should be empowered to appropriate from the public revenues each year for the purpose of augmenting the retirement fund shall be submitted to a vote of the qualified voters who are taxpayers in such city.

**Title of Act**

Sec. 2. This Act may be referred to as the Municipal Retirement Law.

**Definitions**

Sec. 3. The following words and phrases as used in this Act, unless a different meaning is required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the employees' retirement system of the city in which such system provided for herein is established.

(2) "Board" shall mean the "Municipal Retirement Board" provided for in this Act to administer the retirement system.

(3) (a) "City" shall mean the city in which the retirement system as herein provided is established.

(b) "City Agency" shall mean any board, commission, division, department, office or agency of the city government, by which an employee of the city is paid.

(4) "Employee" shall mean any person employed by the city or city agency as hereinbefore defined in regular service at a wage or salary payable at stated intervals, but shall not include any person in the city service elected by the vote of the people. In the event of a question arising as to the right of any person in the service of the city to be classified as an employee under this Act, the decision of the Board shall be final.

(5) "Member" shall mean any person included in the membership of the retirement system as provided in this Act.

(6) "Annuity" shall mean the annual payments for life derived from contributions made by a member. All annuities shall be paid in equal monthly instalments.

(7) "Pension" shall mean the annual payments for life derived from contributions made by the city. All pensions shall be paid in equal monthly instalments.

(8) "Retirement allowance" shall mean the annuity plus the pension, or any optional benefit payable in lieu thereof.

(9) "Earnable compensation" shall mean the full rate of compensation that would be payable to a member if he worked the full normal working time for his position. In cases where compensation includes maintenance, the Board may in its discretion fix the value of that part of the compensation not payable in money, and in the event that such Board does not exercise its discretion "earnable compensation" shall mean the full rate of compensation payable in money.

(10) "Final average salary" shall mean the average annual earnable compensation of a member during his last five years of creditable service immediately preceding his date of retirement, or if he should have less than five years of creditable service, then his average annual earnable compensation during his creditable service.

(11) "Service" shall mean service as an employee and paid for by the city or city agency.

(12) "Prior service" shall mean the service of a member as an employee rendered prior to the date of the establishment of the retirement system, either in the service of the city or city agency, certified on a prior service certificate and allowable as provided in this Act.

(13) "Membership service" shall mean service as an employee since last becoming a member of the retirement system and on account of which contributions are made by the city.

(14) "Creditable service" shall mean prior service plus membership service for which credit is allowable under Section 4 of this Act.

(15) "Accumulated contributions" shall mean the sum of the contributions, together with regular interest, of a member deducted from his salary and held for his credit in the annuity savings fund provided in this Act.

(16) "Regular interest" shall mean interest at such rate as may be set from time to time by the Board in accordance with this Act.

(17) "Medical council" shall mean the council of physicians provided for in this Act.

(18) "Actuarial equivalent" shall mean a benefit of equivalent value when computed with regular interest on the basis of the mortality tables adopted by the Board.

(19) "Beneficiary" shall mean any person in receipt of a retirement allowance, or other benefit, as provided by this Act.

(20) The masculine shall include the feminine.

**Members, qualifications, rights and duties**

Sec. 4. (a) Any person who is an employee of such city on the date this Act becomes effective shall be, except as hereinafter provided, eligible for membership and shall become a member as of the date the governing body finally passes the ordinance herein authorized, unless, within a period of thirty days after the passage of such ordinance, said employee files with the Board written election not to become a member, which shall constitute a waiver of all present and prospective benefits which would otherwise inure to him by participation in the system.

(b) Any person who becomes an employee of such city, after the date of establishment of the retirement system by the final passage of said ordinance, shall become a member as a condition of his employment.

(c) Any employee of said city, whose membership in the retirement system is contingent on his own election and who elects not to participate, may later become a member provided he passes such medical examination as the Board may require. If such employee becomes a member within six months after the effective date of establishment of the retirement system in such city, said employee shall be eligible for prior service credit, but if he does not become a member within such period he shall not be eligible for prior service credit.

(d) Employees of such city who may not become members under this Act shall include (1) the Mayor and members of the governing body of said city, (2) all quasi-legislative, quasi-judicial, and advisory boards and commissions, (3) the Judge or Recorder of the Corporation Court, the Clerk of said Court, and any Deputy Clerk of said Court, (4) all part-time employees, (5) all seasonal and temporary employees and (6) all employees whose compensation is only partly paid by said city.

(e) Should any member in a period of ten consecutive years after last becoming a member be absent from service of said city more than five years, or should he withdraw more than fifty (50%) per cent of his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.

(f) When an employee leaves the service of the city for any reason, he shall be refunded, upon application in writing to the Board on a form provided by the Board, all his accumulated contributions plus interest on same from time of each payment at a rate not to exceed two (2%) per cent per annum.

**Contributions to system; actuarial basis**

Sec. 5. Contributions to the retirement system authorized by this Act shall be made by the members and by the city establishing the system approximately on a 50-50 basis. Such retirement system when established shall be founded and operated on an actuarial basis; that is, on the basis of tables prepared by actuaries of the mortality and withdrawals from the service of such city and the cost of benefits. Individual accounts shall be maintained with each member of the retirement system showing the amount of the member's contributions and the regular interest accumulations thereon, and annually a statement shall be given each member showing the total accumulation to his credit. Said city, upon establishing a retirement system, shall pay annually to the Board, on account of each member, a certain percentage of the employee's compensation, and the rates percent of such contributions shall be fixed on the basis of the liabilities of the retirement system as determined by actuarial valuations. The amounts required to meet these contributions by the city shall be paid to the Retirement Board annually by appropriation from the General Fund of said city. All of the expenses involved

in the administration and operation of the retirement system shall be paid from appropriation from the General Fund of said city.

#### Retirement Board

Sec. 6. (a) The Municipal Retirement Board shall be composed of seven members consisting of the Mayor, one City Councilman, the City Manager, the City Treasurer, or their successors, and three legally qualified voters of the city, residents thereof for the preceding five years, to be chosen by the employees of the city who are contributors to the retirement fund authorized by this Act to be created. Said employees are hereby authorized to form an association for that purpose and the first member so chosen shall be elected for a term of one year. The second person so chosen shall be elected for a term of two years and the third person so chosen shall be elected for a term of three years, after the expiration of which times the respective successors in office shall be elected to serve for a term of three years, and each shall continue to serve until his successor is duly elected. Vacancies occurring by death, resignation or removal of such representatives shall be filled by members chosen by the employees.

(b) The Board shall have charge of and administer the retirement fund and shall order payments therefrom in pursuance of the provisions of this law and of the ordinance adopted by said governing body of said city. The Board shall report annually to the governing body of such city the condition of said fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said fund and the amounts paid them.

(c) Each member of the Board shall, within ten days after his appointment and election, take an oath of office that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system.

(d) Subject to the limitations of this Act, the Board shall from time to time establish rules and regulations for the administration of the fund authorized to be created by this Act and for the transaction of the Board's business. The Board shall elect from its membership a chairman and shall by a majority vote of all its members appoint a secretary who may be, but need not be, one of its members. The Board shall engage such actuarial and other service as may be required to transact the business of the retirement system.

(e) The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board shall approve, subject to any limitations fixed in the ordinance passed by the governing body of the city creating the Board and establishing the fund herein authorized.

(f) The Board shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system.

(g) The Board shall keep a record of all its proceedings which shall be open to public inspection. Said Board shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of said system, and the last balance sheet showing the financial condition of said system as disclosed by an actuarial valuation of the assets and liabilities of the retirement system.

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(h) The Board shall designate a medical council to be composed of three physicians. Other physicians may be employed to report on special cases if required. The medical council shall arrange for and pass on medical examinations required by the retirement system, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board its conclusions and recommendations upon all matters referred to it.

(i) The City Attorney shall be the legal advisor of the Board.

(j) The Board shall designate an actuary who shall be the technical advisor of the Board on matters regarding the operation of the funds authorized by the provisions of this Act and shall perform such other duties as are required in connection therewith. As of the date of the establishment of the retirement system, the actuary shall make such investigation of the mortality, service and compensation expenses of the members of the system, and the Board shall authorize, and, on the basis of such investigation, the actuary shall recommend for adoption by the Board, such tables and such rates as are hereinafter required.

(k) The Board shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the fund authorized by this Act to be created.

(l) At least once within three years after the retirement system authorized by this Act shall become effective in any such city, and at least once during each five year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of said retirement system, and shall make a valuation of the assets and liabilities of the funds of the system. Taking into account the results of such investigation and valuation, the Board shall (1) adopt for the retirement system such mortality, service and other tables as shall be deemed necessary; (2) certify the rates of contribution payable by members under the provisions of this Act, and (3) certify the rates of contribution payable by the city on account of new entrants.

On the basis of such tables as the Board shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement system.

(m) The City Treasurer shall be the custodian of the funds of the retirement system and shall give such bonds for the proper performance of his duties as may be required by the governing body in its ordinance adopted pursuant to this Act. All payments from said funds shall be made by the Treasurer only upon vouchers signed by two persons designated by the Board. A duly attested copy of a resolution of the Board designating such persons and bearing on its face specimen signatures of such persons, shall be filed with the Treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the Board.

(n) Except as herein provided, no member of the Board and no employee of the Board shall have any interest directly or indirectly in the gains or profits of any investment made by the Board, nor as a member of the Board directly or indirectly receive any pay or emolument for his services. No member of the Board or employee thereof shall directly or indirectly for himself or as an agent in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the Board; nor shall any member or employee of the Board become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the Board.

(o) The Board shall be the trustee of the funds of the retirement system and shall have full power in its sole discretion to invest and re-invest, alter and change these funds, and the Board shall not be held liable for the exercise of more than ordinary care and prudence in the selection of such investments, but all funds of the system shall be invested subject to all of the conditions, limitations and restrictions imposed by law upon life insurance companies in the State of Texas in the making and disposing of these investments.

(p) None of the funds or moneys mentioned in this Act shall be assignable either in law or equity or be subject to issue, levy, attachment, garnishment or other legal process.

#### Benefits

Sec. 7. (a) Any member in active service who has attained the age of sixty-five (65) shall be retired upon filing with the Board a request for retirement, on a form provided by the Board for that purpose, stating a date not less than thirty (30) nor more than ninety (90) days subsequent to the filing thereof when the retirement is to be effective. Any member in active service who has attained the age of seventy (70) on the date of establishment of the retirement system or who thereafter attains the age of seventy (70) shall be retired forthwith, unless he shall be permitted to continue in service upon approval of the City Manager and the medical council, and in case of such continuation after age seventy (70) the City Manager or the medical council may require the employee to retire at any time thereafter.

(b) The service retirement allowance shall consist of (1) an annuity which is the actuarial equivalent of the member's accumulated contributions; provided (2) employees in service at the time the retirement system becomes effective who are fifty-one (51) years of age or older and have been in the service not less than twenty (20) years shall be retired on one-half salary, on proper application at age sixty-five (65), as provided above, or if such employee has served less than twenty (20) years, then retirement allowance shall be such percentage of twenty (20) years served times one-half the salary of such employee; provided, the maximum allowance shall in no event exceed One Hundred (\$100.00) Dollars per month; and (3) employees in service at the time the retirement system becomes effective who are less than fifty-one (51) years of age shall be retired at age sixty-five (65) on proper application, as provided hereinabove, on an allowance based on the reserve accumulated by said employee and by the city's contributions to said fund; and provided (4) no employee, even though continued in service after age sixty-five (65), shall pay contributions if such employee has contributed for twenty (20) years, but if said employee has not contributed for twenty (20) years and does not elect to be retired, such employee may continue contributions to increase his accumulated reserve, not to exceed the equivalent of twenty (20) years, until such time as compulsory retirement shall become effective, as hereinabove provided.

#### Ordinary death benefit

(c) Upon the receipt of proper proofs of the death of a member in active service, his accumulated contributions, with accrued interest, shall be paid to such person, if any, as he has nominated in written designation duly executed and filed with the Board; otherwise, such payment shall be to his executors or administrators.



**Financing the retirement system**

Sec. 8. The employees' retirement fund authorized by this Act shall be a fund in which shall be accumulated contributions from the compensation of members and from contributions of the city, to provide for retirement allowances of employees. Upon the basis of such tables as the Board shall adopt, and regular interest, the actuary of the retirement system shall determine for each member the proportion of earnable compensation, which, when deducted from each payment of his prospective earnable compensation prior to his attainment of age sixty-five (65) and accumulated at regular interest until his attainment of such age, shall be computed at that time an annuity equal to the retirement allowance to which he will be entitled at that age on account of his service as a member.

Provided, that all employees of such city in service at the time the retirement system becomes effective shall be divided, for purposes of finances and retirement allowances, into two groups, to wit: (1) all employees who have attained the age of fifty-one (51) years who shall be retired under the system at the proper time by direct appropriation from the General Fund of said city on one-half salary if said employee has been in service twenty (20) years or more, or on such percentage of twenty (20) years served times one-half his salary if he has served less than twenty (20) years, and in no event shall such retirement allowances exceed One Hundred (\$100.00) Dollars per month, and (2) all employees who have not attained the age of fifty-one (51) years, who shall be retired strictly on an actuarial reserve plan as authorized under this Act. Provided, that said Board may provide for the benefits herein provided for by contracting for and taking out from time to time an insurance policy, or policies, and, if necessary, renewals or substitutions of the same should said Board deem it advisable.

**Liquidation of system, provision for**

Sec. 9. Every such ordinance passed by the governing body of the city shall provide a method by which said retirement system may be liquidated in the event said system shall become insolvent.

**Act cumulative**

Sec. 10. This Act shall not expunge, abrogate, rescind or invalidate any ordinance, law or act of the people of any such city heretofore passed, but all such ordinances, laws and acts of the people shall be cumulative and, after the passage of this Act, shall be in full force and effect. Acts 1939, 46th Leg., p. 114.

Effective April 18, 1939.

Section 11 of the act provided that if any provision, section or subsection of the Act should be declared unconstitutional or invalid by a court of competent jurisdiction, such decision should not invalidate the remaining sections and subsections of the Act. Section 12 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act authorizing any incorporated city in this State having a population not less than 53,000 and not more than 57,000, according to the last preceding Federal Census, such cities being located in counties having a population not less than 77,600 and not more than 77,850, according to

the last preceding Federal Census, to create by ordinance a Municipal Retirement Board, and to adopt a plan to pay retirement allowances to retire city employees; providing for the submission to a vote of the taxpayers of any such city the question of empowering the governing body to appropriate from public revenues each year to augment the retirement fund; describing this Act as the "Municipal Retirement Law"; defining words and phrases as used in this Act; prescribing who shall be members of any such retirement system, and providing for a refund of contributions to any employee leaving the service of such city; providing a method for contributions to the retirement fund by city employees and requiring the keeping of individual accounts with each member, and providing

for an annual statement of the total accumulations to each contributor's credit, and providing that expenses of administration and operation of the retirement system shall be paid by appropriation from the General Fund of any such city; prescribing the membership of the Municipal Retirement Board and fixing the terms of such members and the methods by which members shall be named to such Board, empowering the Board to administer the retirement fund and fixing the powers and duties of the Board; providing that the city treasurer shall be custodian of the funds of the retirement system and requiring the giving of bond for proper performance of his duties, and fixing the powers

and duties of the treasurer; providing that none of the funds of the retirement system shall be assignable or subject to issue, levy, attachment, garnishment or other legal process; prescribing the benefits to be derived by city employees under the retirement system and fixing the methods of retirement under said system, and prescribing what shall be a service retirement allowance; providing a method of financing the retirement system; providing for the liquidation of said retirement system in the event of failure of financial success of said system; providing a savings clause for this Act, and declaring an emergency. Acts 1939, 46th Leg., p. 114.

**Art. 6243a. Pensions for firemen and policemen in cities having population of 240,000 to 275,000**

**Who may share in fund**

Sec. 6. Any person who, at the establishment of said Fund, or thereafter, shall have been duly appointed and enrolled in the Fire Department, Police Department, or Fire Alarm Operator's Department of any such city or town, to which application is made for participation in said Fund by such person and who has filed written application within thirty (30) days after the organization of such Board, or who shall file his application within sixty (60) days after becoming an active member of such departments, and after he shall have served the usual probationary period, if any, and who shall have allowed such deductions from his salary; and in addition to the membership provided herein, any person heretofore duly appointed or enrolled in the Fire Department, Police Department, or Fire Alarm Operator's Department of any such city or town who is not now a member of the Pension Fund, may file his application with the Board within sixty (60) days after this Act becomes effective and apply for participation therein; provided, however, that such applicant shall pass a physical examination of the same character that is required for original admission into the respective department in which he serves, and provided, that he shall pay into such Fund a sum of money equal to the amount of salary deductions he would have paid had he joined immediately upon becoming eligible to participate in the benefits of said Fund: as well as the beneficiaries hereinafter named shall be entitled to participate in said Fund. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, § 1.]

**Disability Pension in line of duty**

Sec. 9. When any member of the Fire Department, Police Department, and Fire Alarm Operator's Department of the city or town and who is contributing to said Fund, as herein provided, shall become so permanently disabled through injury or disease contracted in the line of duty as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injuries or disease, approved by the majority of the Board, he shall be retired from the service and be entitled to receive from the said Fund one-half of the base pay of a private per month, plus one-half of the service money granted to the member under the provisions of any City Charter; which base pay of a private shall be computed on the basis of the current pay roll. The pension allowance shall be granted to the man going on pension as well as to the man already on the pension at the time he became disabled

or diseased, the same to be paid in monthly installments which monthly installments shall in no instance exceed one-half of the base pay of a private per month, plus one-half of the service money granted to the member under the provisions of any City Charter. In no case shall a disability claim be acknowledged or award made hereunder until disability has been proved to be continuous and wholly incapacitating for a period of not less than ninety (90) days. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, § 2.]

**Death benefits of widow, etc.**

Sec. 10. In case of the death before or after retirement of any member of the Fire, Police, and Fire Alarm Operator's Departments of any city or town, from disease contracted or injury received while in line of duty, and who at the time of his death, or retirement, was a contributor to the said Fund, leaving a widow, child or children under sixteen (16) years of age; the widow and such child or children shall be entitled to receive from the said Fund an amount not to exceed one-half of the base pay of a private per month, plus one-half of the service money granted to members under the provisions of any City Charter; one-half of the widow's amount in the aggregate shall go to the children under sixteen (16) years of age and the balance one-half to the widow. In case there are no children, the widow shall receive one-fourth of the base pay of a private per month, plus one-fourth of the service money granted to members under the provisions of any City Charter. The one-fourth awarded to the children shall be paid by the Board to the widow who shall equally and uniformly distribute the amount among the children. In no instance shall the amount received by the widow, child or children, exceed a pension allowance of one-half of the base pay of a private per month, plus one-half of the service money granted to members under any City Charter. Wherein<sup>1</sup> the Board, after a thorough examination and by a majority vote in favor thereof, determines that the child or children are unable to and lack the proper discretion to handle said amount provided herein for them, it shall designate and appoint said child's or children's natural guardian as custodian of said Fund. Where there is no parent and natural guardian living, the Board shall have the power and authority to designate a suitable person to receive and administer the said Fund; which said party shall receive, for such child or children under the age of sixteen (16) years, one-fourth of the base pay of a private, and one-fourth of the service money granted to members under any City Charter, per month. The said party designated by the Board shall receive his authority and power according to established legal practice. When any child or children, who are beneficiaries under this Act, shall reach the age of sixteen (16) years, then such child or children, shall no longer participate in the division of said wages of said deceased, but the same shall be paid to the remaining child or children, if any, under sixteen (16) years of age. In no case shall the amount paid to any one family exceed the amount of one-half of the base pay of a private per month, plus one-half of the service money granted to members under the provisions of any City Charter. Upon the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease. No widow, or any such member, resulting from any marriage contract subsequent to the date of the retirement of said member, shall be entitled to a pension under this Act. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, § 3.]

<sup>1</sup> So in enrolled bill. Probably should read "Where".

**Death benefits to father and mother in line of duty**

Sec. 11. If any member of the Fire, Police, and Fire Alarm Operator's Departments dies from injury received, or disease contracted, in line of duty, who was a contributor to said Fund and entitled to participation in said Fund himself, leaves no widow or child but leaves surviving him a dependent father and mother wholly dependent upon said person for support, such dependent father and mother shall be entitled to receive one-half of the base pay of a private per month, plus one-half of the service money granted to members under the provisions of any City Charter, to be equally divided between said father and mother, so long as they are wholly dependent. Where there is one dependent, either father or mother, the Board shall grant the surviving dependent one-fourth of the base pay of a private per month, plus one-fourth of the service money granted to members under any provisions of any City Charter. The Board shall have authority to make a thorough investigation and from investigation determine the facts as to the dependency of the said parties and each of them, as to how long the same exists and may, at any time, upon the request of any contributor to such Fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper and the finding of said Board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustee shall have been set aside or revoked by a Court of competent jurisdiction. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, § 4.]

**Medical examination**

Sec. 13. Said Board may cause any person receiving any pension under the provisions of this Act, who has served less than twenty (20) years, to appear and undergo medical examination by either the Health Director or some reputable physician selected by the Board; as a result of which the Board shall determine whether the relief in said case shall be continued, increased, decreased, or discontinued. In making the findings the Board may change any percentages stipulated in any section or subsection of this bill, by reducing the same, which change shall be determined according to the per cent and degree of incapacity, taking into account, among other things, the length of time the applicant has been a member of the Pension Fund. If any person receiving relief under the provisions of this bill, after due notice, fails to appear and undergo such examination, the Board may reduce or entirely discontinue such relief. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, § 5.]

**Saving clause**

Sec. 17. The laws and parts of laws including city ordinances in conflict herein are hereby repealed to the extent of such conflict only and except as to such conflict shall be in full force and effect, and this Act shall in nowise change, amend or repeal any part of any Fireman's and Policeman's Pension Law other than such law as is provided in House Bill 122, Acts of the First Called Session of the Forty-fourth Legislature.<sup>1</sup>

If any provision, section or subsection of this Act is declared unconstitutional by a Court of competent jurisdiction it shall not invalidate the remaining sections and subsections of this Act. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, § 6.

<sup>1</sup> Acts 1935, 44th Leg., 1st C.S., p. 1565, ch. 387, amending this article.

Section 7 of the amendatory Act of 1936

declared an emergency and provided that the Act should take effect from and after its passage.

Art. 6243b. Firemen and policemen pension fund in cities of over 100,000

**Death benefits, widows, etc.**

Sec. 9. In the case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly wage received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly wages received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly wage received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly wage received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child or children) an amount not exceeding one-half of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly wage received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly wage received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly wage earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for

the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly wage received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly wage received by such member paid to the widow and one-fourth of said monthly wage paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 346 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature. As amended Acts 1937, 45th Leg., p. 616, ch. 308, § 1.

**Separation of Firemen's, Policemen's, and Fire Alarm Operator's Pension Funds in cities of 100,000 to 185,000 population**

Sec. 16. In any such city or town having a population of more than one hundred thousand (100,000) inhabitants and less than one hundred and eighty-five thousand (185,000) inhabitants, according to the last preceding Federal Census, subject to and operating under the Pension Law, applicable to such cities or towns in which the Fire Alarm Operators form a part of and are under the direction of the Fire Department, the governing Body and Board of Trustees may, if it is deemed advisable and a majority of the members of said Fire Department or Police Department vote therefor, authorize and provide for the maintenance and administration of Pension Funds for each Department, said Funds to be the Policemen's Division of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, and the Firemen's Division of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, and to be kept independent of and apart from each other, and said Funds of each Department to consist of contributions by members of said Department, donations thereto and funds received from any source by said Department, as provided in Section 3 and Section 14 of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, and the provisions contained in Sections 1, through 15, of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, shall apply to the management, control, and disposition of each of said Funds, the purpose and effect of said division of said Firemen, Policemen, and Fire Alarm Operators' Pension Fund

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

into a Firemen's Division of said Pension Fund, and a Policemen's Division of said Pension Fund being to maintain the membership of and the payments into each Department separate, and to limit the rights of the members of each Department and their beneficiaries to the Pension Fund of their Department, and after the creation and establishment of a Firemen's Division of said Pension Fund and a Policemen's Division of said Pension Fund, the rights of Firemen, including Fire Alarm Operators and their beneficiaries, shall be limited to the Firemen's Division of said Pension Fund, and the rights of Policemen and their beneficiaries shall be limited to the Policemen's Division of said Pension Fund. After a separation has been voted and approved, as above provided, the Board of Trustees shall apportion the existing Firemen, Policemen, and Fire Alarm Operators' Pension Fund between the two (2) Funds on the basis of contributions made by the members of the respective Departments and donations or payments to said Departments, and thereafter all payments to members or their beneficiaries of benefits, now accrued or hereafter accruing, shall be made from the Fund of their Department. Where a separation of funds is had, as hereinabove provided, the governing body of any city or town whose voters have authorized the payment of funds from the public treasury into the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, is hereby authorized to pay to the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund; for the use of the Pension Fund of each division above provided for, sums not to exceed in total the amount voted by the people to be paid into the single fund. As added Acts 1937, 45th Leg., p. 1335, ch. 495, § 1.

**Validation of proceedings for separation of pension funds**

Sec. 17. All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, maintaining, and administering separate Pension Funds for Firemen, including Fire Alarm Operators and Policemen, are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen, Policemen, and Fire Alarm Operators' Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided. [As added Acts 1937, 45th Leg., p. 1335, ch. 495, § 2.]

**Art. 6243d—1. Policemen's relief and retirement fund**

Section 1. There is hereby created in all incorporated cities in this State having a population of two hundred and ninety thousand (290,000), or more, according to the preceding Federal Census, a fund to be known as the policemen's relief and retirement fund. Said fund shall be administered in each such city by a board to be known as the policemen's relief and retirement board.

The expression "pension fund," as used herein, shall mean the policemen's relief and retirement fund. The expression "pension board," as used in this Act, means the policemen's relief and retirement board of each such city. All members of the police department of any such city shall participate in said pension fund, and shall be subject to all of the provisions of this Act, save and except special officers, part-time officers, janitors, car washers, and cooks. With the exceptions just named, it is the intention hereof to include everyone who is designated by any such city as a member of said police department, regardless of

the particular duty or duties performed by such person. The expressions "member" and "members," as used in this Act, mean members of any such police department who are entitled to participate in said pension fund as above set forth, that is, the entire personnel of any such police department, save and except special officers, part-time officers, janitors, car washers, and cooks, in each city.

#### **Pension board**

Sec. 2. Said pension board in each such city shall consist of one person to be appointed by the mayor and confirmed by the city council or governing body of such city, the city controller, or, if there be no city controller, then the person discharging the duties of the city controller in such city, and three (3) persons to be elected from the police department by the members. As soon as practicable after the effective date of this Act, said members of each such police department shall elect said three (3) members of said pension board, one to be elected until the next succeeding January 1st thereafter, and two (2) to be elected until the second January 1st following such election, and thereafter, as the terms expire, new members to said pension board shall be similarly elected to hold office until the second January 1st following their respective elections. In case of vacancies, new members shall be elected to serve the unexpired term. All persons elected to said pension board shall hold office until their successors are elected and qualified. Any member shall be eligible to election to said pension board.

Said pension board shall annually elect a chairman, vice-chairman, and a secretary, from the members of said pension board. Each one so elected, shall serve until his successor is elected.

A meeting of said pension board may be called at any time by the chairman, secretary, or by any two (2) members of such pension board. Three (3) members of said pension board shall constitute a quorum for the transaction of business.

Each member of said pension board shall take an oath that he will well and faithfully perform the duties of a member of such pension board.

No moneys shall be paid out of the pension fund except upon an order by said pension board, duly entered in the minutes.

#### **Treasurer of pension fund**

Sec. 3. The city treasurer of any such city, or the person discharging the duties of the city treasurer, is hereby designated as the treasurer of the said pension fund for said city, and his official bond to said city shall operate to cover his position of treasurer of said pension fund. All moneys of every kind and character collected or to be collected for said fund, shall be paid over to said treasurer, and shall be administered and paid out only in accordance with the provisions of this Act.

#### **Per capita contributions**

Sec. 4. Commencing with the next calendar month, immediately following the effective date of this Act, per capita contributions of all such members of each such police department as participate in such fund, as aforesaid, shall be made to said fund. Said monthly per capita contribution shall be made as follows: The salary and future salary of each member participating in such fund is hereby reduced Three Dollars (\$3) per month, but said Three Dollars (\$3) per month shall be paid by such city into the said pension fund. No other money paid into said pension fund, however, shall be counted as a part of salary, under any law or



ordinance fixing or pertaining to salaries of members, of any such police department.

#### Accumulated funds

Sec. 5. In all such cities where a general pension fund for city employees has been accumulated but has not been put into operation at the effective date of this Act, the governing body of each such city shall segregate from said fund, the proportion which the total number of members of the police department (eligible to said pension fund) bears to the entire number of all city employees, for whose benefit said fund was accumulated, and shall set aside such sum into the policemen's relief and retirement fund.

#### Assignments of salary to fund

Sec. 6. Any members who have or may have any back or past due salary due them, from any such city, may assign all or any portion of such back salary to said pension fund, and such assignments as have or may hereafter be executed by any such members, are hereby validated and shall be recognized by the governing body of any such city, and such sums, if any, shall be paid into the said pension fund.

#### Appropriations to fund out of general funds of city

Sec. 7. Any such city may make additional appropriations from time to time out of its general fund, or otherwise, into the said pension fund, and hereafter when any such city shall make any appropriations for pensions of city employees or place any money into any such account, the proportionate amount thereof shall be placed in the policemen's relief and retirement fund. Said pension fund may also be augmented as follows: By the giving of entertainments and benefit performances; by gifts or donations from any person, firm, or corporation; all rewards hereafter paid to or due individual members for, or on account of service rendered by them as members of the police department, shall be paid into such fund; and said pension fund shall also participate in funds otherwise provided or that shall hereafter be provided by law pertaining to police pensions of cities of the class herein provided for.

#### Investment of surplus funds

Sec. 8. Whenever, in the opinion of the said pension board, there is on hand in said pension fund, a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said pension board is deemed proper, may be invested in securities of the United States, the State of Texas, or of counties, school districts, or municipal corporations. No investment shall be made, however, which does not meet with the approval of the city controller, if any, of such city.

#### Benefits to begin not prior to January 1, 1942

Sec. 9. No benefits of any kind shall be paid out of said fund prior to January 1, 1942.

#### Pension rates

Sec. 10. From and after January 1, 1942, any member who shall have been a member of such police department for the period of twenty-five (25) years, and who shall have reached the age of fifty (50) years, shall be entitled to a retirement pension of Seventy-five Dollars (\$75) per month for the rest of his life upon his retirement from said police department. Upon the completion of the said twenty-five (25) years of

service, such pension board shall issue to him a certificate showing that he is entitled to said retirement pension, and thereafter, when such member retires from the police department, whether such retirement be voluntary or involuntary, such monthly payments shall forthwith begin, and continue for the remainder of said member's life. Provided, however, that payments shall not commence until such member is fifty (50) years of age, and further provided that members who are eligible for a pension but who continue in the department shall make their per capita contributions until they retire from the department.

In computing the twenty-five (25) years service required for retirement pension, interruption of less than one year out of service, shall be construed as continuous service and such period out of service shall not be deducted from the twenty-five (25) years, but if out for more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years, no previous service prior to said time shall be counted.

Service with any such city in some other department, prior to January 1, 1939, shall be included in the twenty-five (25) years above provided for, but service after January 1, 1939, must be in the police department. The pension board may, within its discretion, provide for the payment of such retirement pension to a former member or members of the police department who have heretofore served for the twenty-five-year period and who have reached the age of fifty (50) years, and it is the intention hereof to include in the group of former members those who have heretofore been retired by any such city and who are drawing partial pay or compensation from such city.

#### **Disability resulting from performance of duty**

Sec. 11. If any member shall become totally or permanently disabled as a direct and proximate result of the performance of duties in the police department, said member shall be retired on a pension of Seventy-five Dollars (\$75) per month.

By total and permanent disability is meant such disability as permanently incapacitates a member from performing the usual and customary duties of a police officer.

Before any retirement on disability pension is made, the pension board shall require such medical examination and such other evidence as it may see fit to establish such total and permanent disability, as above provided.

When any member has been retired for total and permanent disability, he shall be subject at all times to re-examination by the pension board and shall submit himself to such further examination as the pension board may require. If any member shall refuse to submit himself to any such examination, the pension board may within its discretion, order said payment stopped. If a member who has been retired under the provision of this Section, should thereafter recover so that in the opinion of the pension board, he is able to perform the usual and customary duties of a police officer, and such member is reinstated or tendered reinstatement in the police department, then the pension board shall order such payments stopped.

Said pension board may, at its discretion, retire on said permanent and total disability pension, those members of said police department who have heretofore become totally and permanently disabled, as that term is above defined.

**Death resulting from performance of duty**

Sec. 12. Should any such member die, as a direct and proximate result of injuries received or sickness incurred in line of duty in said police department, the pension board shall order paid to the beneficiaries hereinafter designated, the sum of Seventy-five Dollars (\$75) per month for a period of ten (10) years. Such beneficiaries shall be as follows: The surviving wife, surviving children under the age of sixteen (16) years, and the dependent parent or parents, if any. If there be neither surviving wife, children under the age of sixteen (16) years, nor dependent parents, then no payments shall be made on account of the death of any such member. If there be a surviving wife, but no children under the age of sixteen (16) years, then the entire payment of Seventy-five Dollars (\$75) per month shall be made to such surviving wife. If there be a surviving wife and children under the age of sixteen (16) years, then the payments shall be Thirty-seven Dollars and Fifty Cents (\$37.50) per month to the wife and Thirty-seven Dollars and Fifty Cents (\$37.50) per month payable to the legal guardian of such children, to be administered in accordance with the orders of the Probate Court. As each child becomes sixteen (16) years of age, the children's part of Thirty-seven Dollars and Fifty Cents (\$37.50) per month shall thereafter be for the use and benefit of the children who then remain under the age of sixteen (16) years. When there are no longer any children under the age of sixteen (16) years, the entire amount of Seventy-five Dollars (\$75) per month shall be paid the surviving wife. When there is no surviving wife, but there are surviving children under the age of sixteen (16) years, the entire Seventy-five Dollars (\$75) per month shall be paid to the legal guardian of such children under the age of sixteen (16) years, but such payment shall not be made for or on account of any child after said child reaches the age of sixteen (16) years. Should such surviving wife thereafter die, then the entire Seventy-five Dollars (\$75) shall likewise be paid for the benefit of such children as remain under the age of sixteen (16) years. If there be neither a surviving wife nor surviving children under the age of sixteen (16), then such payments shall be made to the dependent parent, or parents, if any, of such deceased member. If there be two (2) dependent parents, then the Seventy-five Dollars (\$75) per month shall be divided equally between them, but if there be only one dependent parent, the Seventy-five Dollars (\$75) per month shall be paid to said parent.

The term "dependent parent" means a parent who is principally dependent upon said member for a livelihood.

By the term "surviving wife" is meant the woman, if any, who is the lawful wife of said member at the time of his death.

No death benefits whatever shall be paid after the expiration of ten (10) years from the death of any said member, and no beneficiary shall ever receive more than Seventy-five Dollars (\$75) per month.

In the event of women members of the department, their surviving husbands shall be entitled to the same rights and benefits as have the wives of the male members.

**Pension to dependents, when**

Sec. 13. When any member who has been retired upon pension, whether retirement pension or disability pension, or when any member who has a pension certificate shall thereafter die from any cause, his pension of Seventy-five Dollars (\$75) per month shall be payable to his dependents, if any, as is provided in the next preceding Section hereof, but only for the unexpired portion of ten (10) years. In computing said

ten (10) years, such length of time as a pension may have been paid to said member during his lifetime shall be deducted from such ten-year period, and such dependents shall receive said payment only for the unexpired term of ten (10) years.

#### **Refunds on leaving service**

Sec. 14. If any such member shall leave such police department either voluntarily or involuntarily before he is entitled to a pension, he shall have refunded to him the deductions from his salary, which have been paid into said pension fund. Said payments may be made to him, either in a lump sum or on a monthly basis, as may be determined by the pension board.

Provided, however, that this Section shall be subject to Section 10 and upon a re-entry into the department all such refunds shall be paid back into the pension fund or prior service of such member shall not be counted toward his retirement pension.

#### **Reduction of benefits authorized in case fund is depleted**

Sec. 15. In the event said pension fund becomes seriously depleted, in the opinion of the pension board, said pension board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners or beneficiaries as and when said fund is, in the opinion of the pension board, sufficiently re-established to do so.

#### **Legal counsel for board**

Sec. 16. The city attorney of any such city shall render such legal service, and without additional compensation, as such pension board may request him to do. The pension board may, if it deems necessary, employ additional legal assistance and pay reasonable compensation therefor, out of said police pension fund. Said pension board, may at its discretion, from time to time, employ the services of an actuary, and pay him reasonable compensation out of said police pension fund.

#### **Pensions not subject to execution, etc.**

Sec. 17. No portion of any such pension fund, either before or after its order of disbursement by said pension board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any Court of this State for the payment or satisfaction in whole or in part out of said pension fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such police pension fund or any part thereof, or any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purposes whatsoever.

#### **Severability clause**

Sec. 18. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all

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other provisions shall remain valid and unaffected by any invalid portion, if any.

**Act to be cumulative to other laws**

Sec. 19. The provisions hereof shall be cumulative of and in addition to all other laws relating to pensions, which laws are hereby preserved and continued in force and effect, provided, however, that in the event of any conflict, the provisions of this law shall control, and police departmental pensions in the cities covered by this Act shall be administered in accordance with this law. Acts 1939, 46th Leg., p. 105.

Effective May 12, 1939.

Section 20 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to create a police pension system for all cities in this State having a population in excess of two hundred and ninety thousand (290,000), according to the preceding Federal Census; providing for the creation of a policemen's relief and retirement fund for such cities; providing that said fund shall be administered by a pension board; providing who shall participate in said pension fund; providing how said pension board shall be constituted, appointed, and organized, and providing the duties of said pension board; providing that the city treasurer shall be the treasurer of such fund, and defining his duties; providing that a per capita contribution of members of such police departments shall be paid into said fund, and providing for the proportionate reductions in salary for the purpose of making such contribution; providing for the segregation of a portion of general pension funds on hand to be allocated to said police pension funds; providing authority for members of such police departments to assign past due salary to said fund; providing that such

cities may make appropriations from the general fund into said pension fund, and providing other methods for the raising of moneys for said pension fund; providing authority for investing moneys of said pension fund; providing that no benefit shall be paid out of any such fund prior to January 1, 1942; providing for the payment of a retirement pension and the issuance of retirement pension certificates; providing for the payment of total and permanent disability benefits and the issuance of certificates thereof; providing for the payment of benefits to certain relatives and dependents in the event members of such police departments shall die as a result of injuries or sickness incurred in line of duty; providing for payments to certain relatives and dependents in the event of the death of pensioners or those entitled to pensions; providing for refunds to members who leave such police departments; providing for reductions in benefits in the event of depletion of such pension fund; providing for legal service and the employment of an actuary; providing for the exemption from legal process, and other protection for such pension funds; providing a saving clause; providing a method of construction of this Act; and declaring an emergency. Acts 1939, 46th Leg., p. 105.

**Art. 6243e. Firemen's relief pension fund**

Sec. 1. For the purpose of this Act, there is hereby created in this State a special fund to be known and designated as the "Firemen's Relief and Retirement Fund" and it shall be the duty of the State Treasurer and he is hereby directed to pay over, transfer, and convert any and all moneys received by him from collection of the tax herein levied to such Fund, which Fund shall, at all times, be kept under his official bond and oath of office, separate and distinct from any other Fund of this State, with a public record thereof showing all receipts and disbursements.

**Tax on gross premiums of insurance companies**

Sec. 2. For the purpose of providing permanent funds and revenue for the Firemen's Relief and Retirement Fund hereby created, there is hereby levied and assessed against each and every insurance company, whether a firm, partnership, corporation, mutual or reciprocal company, transacting in this State the business of fire insurance, an additional occupation or license tax of two (2) per centum of all gross premium receipts received or collected from persons or property within this State during the preceding year ending December 31st, provided, the said two (2) per cent shall not be passed on to the purchaser of insurance and the Insurance Department shall not allow such two (2) per cent as ad-

ditional charge in making rates of fire insurance in the State of Texas. The gross premium receipts herein referred to shall be reported by said insurance companies to the Commissioner of Insurance subject to the same credits and deductions for capital investment, re-insurance and return premium paid policyholders; the amount of the tax thereon shall be paid in addition to, at the same time and in the same manner as is now provided by Article 7064 of the Revised Civil Statutes of Texas, 1925, and Acts amendatory thereof, and which said tax when so paid and received by the State Treasurer, less the proportion thereof for public school purposes, shall be set aside, deposited into and transferred to and for the use, benefit, and purposes of said Firemen's Relief and Retirement Fund and/or disbursed therefrom as herein provided and directed.

#### Composition of Board of Trustees and powers

Sec. 3. That all incorporated cities and towns in this State having a regularly organized active fire department, whether wholly paid, part paid or volunteer, with fire fighting apparatus and equipment of the value of One Thousand Dollars (\$1000) or more, the Mayor of such city or town, the city or town treasurer, or if no treasurer, then the city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three (3) members of such regularly organized active fire department, to be selected by vote of the members of such fire department in the manner hereinafter directed shall be and are hereby constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse such Fund for the respective city or town and as such Board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of \_\_\_\_\_, Texas." The Mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of said Board of Trustees respectively. Within thirty (30) days after this Act takes effect, the fire department of any such city or town as comes within the provisions of this law shall elect by ballot three (3) of its members, one to serve for one year, one to serve for two (2) years, and one to serve for three (3) years, or until their successors may be elected as herein provided, as members of said Board of Trustees and shall immediately certify such election to the governing body of such city or town. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, said fire department shall elect by ballot and certify, one member of such Board of Trustees for a three (3) year term. Said Board of Trustees shall elect annually from among their number a vice-chairman, who shall act as chairman in the absence or disability of the mayor-chairman. Such Board of Trustees shall hold regular monthly meetings at such time and place as they may by resolution designate and may hold such special meetings upon call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city or town funds all moneys for the use and benefit of said Firemen's Relief and Retirement Fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by said city or town for the purpose; shall make disbursements from said Fund only upon regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of said Board of Trustees. The city

or town treasurer, as the treasurer of said Board of Trustees, shall be the custodian of the Firemen's Relief and Retirement Fund for such city and town under penalty of his official bond and oath of office. No member of said Board of Trustees shall receive compensation as such. Said Board of Firemen's Relief and Retirement Fund Trustees of each such city or town in this State shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the Firemen's Pension Commissioner, herein provided for, a detailed and itemized report of all receipts and disbursements with respect to such Fund, together with a statement of their administration thereof and shall make and file such other reports and statements, or furnish such further information as, from time to time, may be required or requested by said Firemen's Pension Commissioner.

Said Board of Trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before Notaries Public and its chairman shall have the power and authority to administer oaths to such witnesses. A majority of all members shall constitute a quorum to transact business and any order of said Board of Trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occur in the membership of said Board of Trustees by reason of the death, resignation, removal, or disability of any incumbent such vacancy shall be filled in the manner herein provided for the selection of such member to be so succeeded.

#### **Pro rata disposition of moneys by State Treasurer**

Sec. 4. The State Treasurer shall, not later than the first day of May of each year after this Act takes effect, apportion and pay over to the various Boards of Trustees, upon a pro rata ratio basis of the insurance written upon property within the corporate limits of such city or town, all moneys coming into his hands annually from the gross premium receipts tax herein provided; save and except, the sum of Fifty Thousand Dollars (\$50,000) less expenses of administration as herein provided, the balance of which shall be kept and retained by the State Treasurer in the said Firemen's Relief and Retirement Fund as an emergency reserve fund for the purpose herein provided.

#### **Contributions accepted from any source**

Sec. 5. In addition to the apportionment from the State Treasurer from the tax collected from insurance companies, and in addition to the amounts deducted from salaries or paid by members of the fire department as is in this Act provided, the Board of Firemen's Relief and Retirement Fund Trustees of that city or town coming within the provisions of this Act shall have the power and authority to accept and receive for the use and benefit of said Firemen's Relief and Retirement Fund of that city or town, contributions of money from any source; rewards, fees, gifts, or emoluments in money that may be paid or given for, or on account of, any service of the fire department or any member thereof except when allowed to be retained by said member by resolution of the Board of Trustees, or when given to endow a medal or other permanent competitive or merit reward, and the earnings upon the deposit, loan, or investment of said Fund or any part thereof, all of which are hereby directed paid into said Fund to be used for the purposes for which said Fund is created.

#### **Retirement age and pension**

Sec. 6. On and after the 1st day of April, A.D.1939, any person who has been duly appointed and enrolled, and who has attained the age

of fifty-five (55) years and who has served actively for a period of twenty (20) years in some regularly organized fire department in any city or town in this State now within or that may come within the provisions of this Act, in any rank, whether as wholly paid, part paid or volunteer firemen shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one-half of his average monthly salary not to exceed a maximum of One Hundred Dollars (\$100) per month. Such average monthly salary to be based on the monthly average of his salary for the five (5) year period preceding the date of such retirement; provided further, that if his average monthly salary is Fifty Dollars (\$50) or less per month or if a volunteer fireman with no salary, he shall be entitled to a monthly pension or retirement allowance of Twenty-five Dollars (\$25).

#### Retirement on disability

Sec. 7. Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city or town in the State, now within, or that may hereafter come within the provisions of this Act, shall become physically or mentally disabled while in and/or in consequence of, the performance of his duty, said Board of Trustees may, upon his request, or without such request if it shall deem proper and for the good of the department, retire such person from active service either upon total or partial disability as the case may warrant and shall order that he be paid from such Fund, (a) if for total disability, an amount equal to one-half the average monthly salary of such fireman, not to exceed the sum of One Hundred Dollars (\$100) per month; provided that if such average monthly salary be Fifty Dollars (\$50) or less per month, or if he be a volunteer fireman with no salary, the amount so ordered paid shall not be less than Twenty-five Dollars (\$25) per month; such average monthly salary to be based on the monthly average of his salary for the five (5) year period, or so much thereof as he may have served, preceding the date of such retirement; or, (b) if the disability be less than total, then such sum as in the judgment of the Board of Trustees may be proper and commensurate with the degree of disability; provided further, that if and when such disability shall cease, such retirement or disability allowance shall be discontinued and such person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

#### Compensation on temporary disability

Sec. 8. Whenever any duly enrolled member of any regularly organized active fire department of any city or town now coming within or that may hereafter come within the provisions of this Act as herein limited, on account of accident or other temporary disability caused or sustained while in, and/or in consequence of the performance of his duties, be confined to any hospital or to his bed and/or shall require the professional services of a physician, surgeon or nurse, said Board of Trustees shall upon presentation of properly itemized and verified bills therefor, order paid from the Firemen's Relief and Retirement Fund of that city or town, all necessary hospital, physician's, surgeon's, nurse's and/or medicine bills or expenses and not less than Five Dollars (\$5) nor more than Fifteen Dollars (\$15) per week to such fireman during such temporary disability; provided however, that in no case shall the amount or amounts so paid for such bills and expenses exceed the aggregate sum of One Hundred Dollars (\$100) in any one month; and provided further, that the benefits provided by this Section shall not apply to any city or town having a fully paid fire department.



**Certificates of disability**

Sec. 9. No person shall be retired either for total or temporary disability, except as herein provided, nor receive any allowance from said Fund, unless and until there shall have been filed with the Board of Trustees, certificates of his disability or eligibility signed and sworn to by said person and/or by the city or town physician, if there be one, or if none, then by any physician selected by the Board of Trustees. Said Board of Trustees, in its discretion, may require other or additional evidence of disability before ordering such retirement or payment aforesaid.

**Contributions by participants deducted from salaries**

Sec. 10. Within sixty (60) days after this Act takes effect each fully paid fireman and each part paid fireman whose salary or compensation is Fifty Dollars (\$50) or more per month and each part paid fireman whose salary or compensation is less than Fifty Dollars (\$50) per month and each active volunteer fireman in the employ of any such city or town or enrolled in the fire department of any such city or town, who desires himself or his beneficiaries, as hereinafter named, to participate in such Fund or the benefits therefrom as by this Act provided, shall file with the Secretary-Treasurer of the Board of Firemen's Relief and Retirement Fund Trustees of that city or town a statement in writing under oath that he desires to participate in the benefits from such Fund, giving the name and relationship of his then actual dependents and shall therein authorize said city or town or the governing body thereof to deduct not less than one per centum nor more than three (3) per centum, the exact amount thereof to be determined by the vote of the fire department of which such person is a member, from his salary or compensation if a wholly paid or part paid fireman whose salary or compensation is more than Fifty Dollars (\$50) per month, but if a part paid fireman whose salary is less than Fifty Dollars (\$50) per month, or if a volunteer fireman, the statement shall include a promise and an obligation to pay to said Board of Trustees not less than Three Dollars (\$3) nor more than Five Dollars (\$5) per annum to be paid semi-annually, the exact amount thereof to be likewise determined by vote of the fire department of which such person is a member. <Such money so deducted from salaries or compensation or agreed to be paid to become and form a part of the Fund herein designated and established as Firemen's Relief and Retirement Fund of that city or town.> Failure or refusal to make and file the statement herein provided, or failure or refusal to allow deduction from salary or to pay the amount herein specified as herein provided on the part of any member shall forfeit his right to participate in any of the benefits from said Firemen's Relief and Retirement Fund. If any such member shall elect not to participate in such Fund, he shall not be liable for any salary deduction nor to pay as herein provided.

**Determination of amount of contribution by members**

Sec. 11. Within thirty (30) days after this Act takes effect, the fire department of any city or town entitled by the provisions of this Act to participate in said Firemen's Relief and Retirement Fund shall determine by vote of the members thereof, the amount, within the limitations of this Act, of salary to be deducted in case of paid firemen, or the amount to be paid by each member thereof per annum in case of volunteer or part paid firemen whose salary is less than Fifty Dollars (\$50) per month, and the fire chief or other proper officer of such fire department shall so certify the result of said vote and determination to the Board of Firemen's Relief and Retirement Fund Trustees for that city or town, which said certificate shall be authority for the governing body

of such city or town to make such deductions from salaries and apply such deductions or payments to such Fund.

**Allowances to beneficiaries of deceased members**

Sec. 12. If any member of any department, as herein defined, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or if while in service, any member shall die from any cause growing out of and/or in consequence of the performance of his duty; or shall die from any cause whatsoever after he has become entitled to an allowance or pension, certificate and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly allowance as follows: (a) to the widow, so long as she remain a widow and provided she shall have married such member prior to his retirement, a sum equal to one-third of the average monthly salary of the deceased at the time of his retirement on allowance or death; (b) to the guardian of each child the sum of Six Dollars (\$6) per month until such child reaches the age of eighteen (18) years; (c) to the dependent parent only in case no widow is entitled to allowance, the amount the widow would have received to be paid to but one parent and such parent to be determined by the Board of Trustees, and (d) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be increased to the sum of Twelve Dollars (\$12) per month for each such dependent minor child; provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

**Exemption of benefits from judicial process**

Sec. 13. No portion of said Firemen's Relief and Retirement Fund shall, either before or after its order of disbursement by said Board of Trustees to such retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any such deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of, or by, any Court of this State for the payment or satisfaction in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or his widow, the guardian of his minor child or children, his dependent father or mother, nor shall said Fund nor any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

**Certificate to firemen eligible to retirement or disability allowance; continuance in service**

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement, but who shall elect to continue in the service of such fire department, may apply to the Board of Trustees for a

certificate, and if found to possess such qualifications and be eligible for retirement as herein provided, the Board of Trustees shall issue to such fireman a certificate showing him to be entitled to retirement or disability allowance and upon his death such certificate shall be prima facie proof that his widow and/or dependents shall be entitled to their respective allowances without further proof except as to her or their relationship.

#### **Medical examination of persons retired for disability**

Sec. 15. The Board of Trustees, in its discretion, at any time, may cause any person retired for disability, under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the Board of Trustees for the purpose, and the result of such examination and report thereof by said physician shall be considered by said Board of Trustees in determining whether the relief in said case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from said Board of Trustees, to appear and be re-examined, unless excused by said Board, fail to appear or refuse to submit to re-examination, said Board of Trustees is authorized in its discretion, to reduce or entirely discontinue such relief.

#### **Recall for duty in emergency**

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against such city or town for payment for such duty so performed.

#### **Payments to dependents on conviction of members**

Sec. 17. Whenever any person who shall have been granted an allowance hereunder shall have been convicted of a felony, then the Board of Trustees shall order the allowance so granted or allowed such person discontinued, and in lieu thereof, order paid to his wife, and/or dependent child, children or dependent parent, the amount herein provided to be paid such dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

#### **Appeals by persons aggrieved by decision or order of Board of Trustees**

Sec. 18. Any person possessing the qualifications herein required for retirement for length of service or disability or having a claim for temporary disability who deems himself aggrieved by the decision or order of any Board of Trustees, whether because of rejection or the amount allowed, may appeal from the decision or order of such Board of Trustees to the Firemen's Pension Commissioner by giving written notice of intention to appeal, which said notice shall contain a statement of his intention to appeal, together with a brief statement of the grounds and reasons why he feels aggrieved and which said notice aforesaid shall be served personally upon the chairman or secretary-treasurer of said Board of Trustees within twenty (20) days after the date of such order or decision. After service of such notice, the party appealing shall file with the Firemen's Pension Commissioner a copy of such notice of intention to appeal, together with the affidavit of the party making service thereof showing how, when, and upon whom said notice was served. Within thirty (30) days after service of such notice of intention to appeal upon said Board of Trustees the secretary-treasurer thereof shall make up and file with the Firemen's Pension Commissioner a transcript

of all papers and proceedings in such case before said Board and when the copy of the notice of intention to appeal aforesaid and said transcript shall have been filed with said Firemen's Pension Commissioner, said appeal shall be deemed perfected and said Firemen's Pension Commissioner shall docket said appeal, assign same a number, fix a date for hearing said appeal, and notify both appellant and the Board of Trustees of the date so fixed for hearing, at which hearing either may appear before said Commissioner if they so desire. The Firemen's Pension Commissioner may, at any time before rendering his decision upon such appeal, require or request further or additional proof or information, either documentary or under oath. After consideration of said appeal, said Commissioner shall announce his decision in writing, giving to each party to such appeal a copy and shall direct said Board of Trustees as to the disposition of the case. A final decision or order by such Firemen's Pension Commissioner may be appealed and an appeal therefrom may be taken to the proper Court of Travis County, Texas, having jurisdiction of the subject matter, upon the serving within twenty (20) days after date of such decision or order of a notice in writing of such intention to so appeal upon the adverse party.

#### **Firemen's Pension Commissioner**

Sec. 19. For the purposes of co-ordinating the reports of the various Boards of Firemen's Relief and Retirement Fund Trustees; to provide examination from time to time of the accounts of such Boards; to determine and certify to the State Treasurer such Boards as shall, under provisions of this Act, qualify for and be entitled to consecutive apportionment from said Firemen's Relief and Retirement Fund and to hear, determine, and review appeals from the decision or order of any of such Boards of Trustees, there is hereby created the office of Firemen's Pension Commissioner, whose office shall be located in the City of Austin, Texas, to be appointed biennially by the Governor from a list of not less than three (3) nor more than ten (10) nominees submitted by the State Firemen's and Fire Marshal's Association of Texas. Such Commissioner shall be appointed for a term of two (2) years beginning July 1, 1937, and shall receive an annual salary of Three Thousand, Six Hundred Dollars (\$3,600) payable in monthly installments of Three Hundred Dollars (\$300) per month, together with the necessary office expenses, postage, stationery, office fixtures, and supplies, not to exceed the sum of Fifteen Hundred Dollars (\$1500) annually, together with his actual traveling expenses when necessary, to be paid by voucher of the State Treasurer from said Firemen's Relief and Retirement Fund. Such Commissioner shall have authority to examine the accounts and records of the various Boards of Trustees; shall make rules and regulations not otherwise provided herein, and prepare forms for use by the various Boards of Trustees in order to assist in the work and duties thereof; shall classify and co-ordinate the reports of the various Boards of Trustees and shall issue his certificate to the State Treasurer, not later than April 1st of each year, certifying such Boards of Trustees as shall, in his opinion, have complied with the provisions of the Act thereby becoming entitled to apportionment from said Funds for the coming current year, shall examine and approve or disapprove any and all applications of the Boards of Trustees for additional apportionment from the emergency reserve of said Fund as herein provided; shall hear, determine, and/or review all appeals herein provided and shall do any and all things within his power and as he may deem necessary to facilitate and assist in the purpose for which such Firemen's Relief and Retirement Fund is created.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Application by Board of Trustees for additional temporary apportionment**

Sec. 20. Whenever any Board of Trustees shall find the fund as herein provided and within their control insufficient to meet the demands against such funds, such Board of Trustees may make written application to the Firemen's Pension Commissioner for additional temporary apportionment from the emergency reserve of such Fund, such application by the sworn statement of at least three (3) members of such Board of Trustees showing that the department applying for such temporary apportionment has assessed its members the maximum assessment provided hereunder and showing further the necessity and reasons for such additional temporary apportionment and if approved by the Firemen's Pension Commissioner, he shall certify his approval to the State Treasurer and shall order the amount to be allowed on such application within the following limits, to wit: to Boards in cities or towns having a population of ten thousand (10,000) or less, not to exceed the sum of One Thousand Dollars (\$1,000) annually; to Boards in cities or towns having a population of more than ten thousand (10,000) but less than twenty-five thousand (25,000), not to exceed the sum of One Thousand, Five Hundred Dollars (\$1,500) annually; to Boards in cities or towns having a population of twenty-five thousand (25,000) or more, but less than fifty thousand (50,000), not to exceed the sum of Two Thousand Dollars (\$2,000) annually; to Boards in cities or towns having a population of fifty thousand (50,000) or more, but less than one hundred thousand (100,000), not to exceed the sum of Two Thousand, Five Hundred Dollars (\$2,500) annually; to Boards in cities or towns having a population of one hundred thousand (100,000) or more, but less than one hundred and fifty thousand (150,000), not to exceed the sum of Three Thousand, Two Hundred and Fifty Dollars (\$3,250) annually; to Boards in cities or towns having a population of one hundred and fifty thousand (150,000) or more, but less than two hundred thousand (200,000), not to exceed the sum of Four Thousand Dollars (\$4,000) annually; and to Boards in cities or towns having a population of two hundred thousand (200,000) or more, not to exceed the sum of Five Thousand Dollars (\$5,000) annually. Upon such certificate of approval of such application by the Firemen's Pension Commissioner, the State Treasurer shall pay to such applicant Board the sum stated in such certificate from the emergency reserve of said Firemen's Relief and Retirement Fund and in addition to the amount to be paid such Board under the regular apportionment as herein provided due such Board.

**Computation of length of service**

Sec. 21. In computing the time or period for retirement for length of service as herein provided, less than one year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him in so far as his retirement time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall not be entitled to benefits hereunder until he shall have served one year continuously.

**City attorney to represent Board of Trustees in appeals**

Sec. 22. It shall be and is hereby made the duty of the City Attorney, without additional compensation, to appear for and represent the Board of Trustees of that city or town in all cases of appeal to the Firemen's Pension Commissioner by any claimant from the order or decision of such Board of Trustees.

**Investment of surplus**

Sec. 23. Whenever, in the opinion and judgment of said Board of Trustees, there is on hand in the said Firemen's Relief and Retirement Fund for that city or town, a surplus over and above a reasonably safe amount to take care of the current demands upon such Fund, such surplus or so much thereof as in the judgment of said Board is deemed proper, may be invested in Federal, State, County, or Municipal Bonds, and the interest therefrom and thereon shall be deposited into said Fund as a part thereof.

**Action for recovery of benefits wrongfully obtained**

Sec. 24. The Board of Trustees of any city or town as herein created and constituted shall have the power and authority to recover by civil action from any offending party or from his bondsmen, if any, any moneys paid out or obtained from said Fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain such action in the name of said Board of Trustees for the use and benefit of such Fund.

**Pro rata reduction of benefits on deficiency**

Sec. 25. If, for any reason the Fund or Funds hereby made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits then all granted allowances, or disability benefits shall be proratably reduced for such time as such deficiency exists.

**Definitions**

Sec. 26. Whenever used herein, the term "Board" or "Board of Trustees" shall be deemed to mean and refer to the Board of Firemen's Relief and Retirement Fund Trustees.

Whenever used herein, the term "firemen" or "fireman" shall be deemed to mean and include all active members of any regularly organized fire department of any incorporated city or town of this State, having fire fighting equipment or apparatus of the minimum value of One Thousand Dollars (\$1,000) or more whether wholly paid, partly paid and partly volunteer, or wholly volunteer. All other members shall be deemed honorary or inactive members and as such shall not be entitled to any of the benefits provided by this Act.

Whenever used herein, the term "active firemen," "active fireman," or "active members" shall be deemed to mean and include all paid firemen who receive regular salaries as firemen and such partly paid or volunteer firemen as in each calendar year answer at least twenty-five (25) per cent of all fire alarms and at least forty (40) per cent of all drill or practice calls.

**Partial invalidity**

Sec. 27. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

**Provisions cumulative of other acts**

Sec. 28. The provisions hereof shall be cumulative of and in addition to all other laws and particularly Articles 6229 to 6243 inclusive and all Acts amendatory thereof, which are hereby preserved and continued in force and effect. Acts 1937, 45th Leg., p. 229, ch. 125.

### 3. OLD AGE ASSISTANCE

#### Art. 6243—2. Purpose

It is hereby declared to be the intention and purpose of the Legislature by and through the enactment of this Act to provide, in part, for the payment of old age assistance benefits, by raising revenues for such purpose and by delimiting the class of persons who shall be eligible for old age assistance benefits. It is recognized by the Legislature that it is impracticable to pay benefits to persons over sixty-five (65) years of age, except those who are in necessitous circumstances; in order that the needy aged may be cared for, it is necessary that the State have funds on hand to meet the accruing obligations therefor. In order to accomplish this purpose, the Legislature declares that it is necessary to accomplish two incidental objectives, namely: (1) the number of persons receiving old age assistance benefits must be decreased, and (2) in addition, more revenues must be provided for the purposes of paying such benefits. The accomplishment of this object is the purpose of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 1, § 1.]

#### Art. 6243—3. Persons entitled to assistance

Subject to the provisions of this Act, needy persons residing in Texas over the age of sixty-five (65) years who are in necessitous circumstances shall be entitled to financial assistance from the State of Texas. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 1.]

#### Art. 6243—4. State Board of Control, as Texas Old Age Assistance Commission; compensation; expenses

In addition to the duties now imposed by law, the State Board of Control is hereby charged with the duty of administering this Act, and, for the purpose of administering the provisions of this Act, the State Board of Control shall be known as and shall constitute the Texas Old Age Assistance Commission. Whenever the word "Commission" is used in this Act, it shall mean the Texas Old Age Assistance Commission, which shall be composed of the members of the Board of Control. As members of the Texas Old Age Assistance Commission each member of the Board of Control shall be compensated, in addition to the compensation they now receive by law, on the basis of One Thousand Two Hundred Dollars (\$1,200) per year, which shall be paid in equal monthly installments out of the Old Age Assistance Fund herein created. The members of the Commission shall be entitled to all reasonable and necessary expenses incurred in the discharge of official duties, such allowance, however, not to exceed the sum fixed by law for other State officials in the discharge of similar duties. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 2.]

#### Art. 6243—5. Qualifications for assistance

The Commission may grant financial aid to any needy person who

- (a) Has attained the age of sixty-five (65) years;
- (b) Is a citizen of the United States;
- (c) Has resided in the State of Texas for five (5) years or more within the last nine (9) years preceding the date of his application for as-

sistance, and has resided in the State of Texas continuously for one (1) year immediately preceding the application. The terms "residence", "residing" and "resided" as used in this Act shall denote actual physical presence within this State, as distinguished from the word "domicile" and the word "residence" as used in their broader meaning.

(d) Is not at the time of receiving such aid an inmate of any public or private home for the aged, or any public or private institution of a custodial, correctional, or curative character; provided, however, that aid may be granted to persons temporarily confined in private institutions for medical or surgical care;

(e) Has not made a voluntary assignment or transfer of property for the purpose of qualifying for such aid;

(f) Is not an habitual criminal or an habitual drunkard. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 3, as amended Acts 1939, 46th Leg., p. 541, § 1.

Effective June 2, 1939.

Section 2 of the amendatory act of 1939 emergency and provided that the act should amends art. 6243—6, section 3 declared an take effect from and after its passage.

#### Art. 6243—6. Duties of Commission in determining eligibility of applicants for assistance

In determining the eligibility of an applicant for assistance under this Act, it shall be the duty of the Commission to consider and take into account all facts and circumstances surrounding the applicant, including his earning capacity; and if from all the facts and circumstances the applicant does not appear to be in a needy condition, assistance shall be denied. In calculating income and resources of the applicant, the Commission shall take into account all money received by gift, devise or descent; provided that the applicant shall not be denied assistance, who does not own real estate in excess of a resident homestead, as the term "resident homestead" is defined in the Constitution and Laws of the State of Texas; and in calculating the resources of the applicant, said resident homestead shall not be considered; and provided further, the fact that the applicant has a child or children or other relatives, except husband or wife, able to support said applicant, shall not be considered in determining the applicant's eligibility for assistance, and no inquiry shall be made into the financial ability of said child or children or other relatives, except husband or wife, to support said applicant. It is further provided that assistance shall not be denied applicant, if married, who has personal property not in excess of Fifteen Hundred (\$1500.00) Dollars, and if single, not in excess of One Thousand (\$1000.00) Dollars. Provided that an applicant who has in excess of Three Hundred and Sixty (\$360.00) Dollars cash on hand shall not be eligible for assistance under this Act. Provided that an applicant may be carrying on his life, insurance not in excess of One Thousand (\$1000.00) Dollars, and that any applicant who is carrying life insurance not in excess of One Thousand (\$1000.00) Dollars shall not be disqualified for assistance and any accumulated cash or loan value on said life insurance policy or policies shall not be taken into consideration in calculating the resources of said applicant and aid to said applicant shall not be denied or reduced or his need minimized in any way on account of said life insurance policy or policies. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 4, as amended Acts 1939, 46th Leg., p. 541, § 2.

Effective June 2, 1939.

Section 3 of the amendatory act of 1939 the act should take effect from and after its declared an emergency and provided that passage.



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Art. 6243—7. Offices, records, equipment, money, etc., of prior Commission to be turned over**

On the effective date of this Act each member of the Texas Old Age Assistance Commission created under the provisions of House Bill No. 26, Acts Second Called Session of the Forty-fourth Legislature,<sup>1</sup> and each agent, officer and employee of said Commission, shall deliver to the Board of Control all furniture, fixtures, files, books, records, accounts, data and equipment belonging to the State of Texas or appertaining to his office or employment and the Board of Control shall receive and receipt for same. Each member, agent, and officer of said Commission shall pay over to the officer lawfully authorized to receive the same all money coming into his hands as such and shall also deliver to said Board of Control the possession of the offices and premises occupied by said Commission. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 5.]

<sup>1</sup> Article 6243—1.

**Art. 6243—8. Executive Director; qualifications; Chief Auditor; salaries; fidelity bonds**

(a) On the effective date of this Act the Board of Control, acting as the Texas Old Age Assistance Commission, shall select and appoint an Executive Director of the Texas Old Age Assistance Commission, who shall be not less than thirty-five (35) years of age at the date of his appointment, who is a resident citizen of the State of Texas and who shall have resided within the State for at least ten (10) years preceding the date of his appointment, who shall not be an occupant of any elective State office at the time of his appointment nor have occupied any elective State office during the six (6) months next preceding the date of his said appointment, and who shall be paid an annual salary of Five Thousand Dollars (\$5,000) in equal monthly installments. The said Old Age Assistance Commission shall also appoint a Chief Auditor who shall be paid an annual salary of Four Thousand Dollars (\$4,000) in equal monthly installments. The Executive Director and the Chief Auditor shall make and execute a bond in form prescribed by the Attorney General, payable to the Governor of Texas, in the sum of Thirty Thousand Dollars (\$30,000) conditioned upon their faithful performance of the duties imposed upon them by law. The premium on such bonds shall be paid out of the funds herein appropriated for operating expenses, and any recovery on such bonds shall inure to the benefit of the Old Age Assistance Fund.

**Administrative duties of Executive Director**

(b) The Executive Director, under the direction of the Old Age Assistance Commission, shall be the chief administrative officer of said Commission, and as such shall be responsible for the proper and economical administration of the affairs of such Commission. He shall have the power and authority, with the consent and approval of a majority of the members of the Commission, to select, appoint and discharge such assistants, clerks, stenographers, auditors, bookkeepers and clerical assistants as may be necessary in the administration of the duties imposed upon such Commission within the limits of the appropriations that may be made for the work of said Commission; salaries of all such employees shall be fixed by the Commission in keeping with salaries paid other State employees performing similar work and holding similar positions. The Commission is authorized to require bond or bonds from any and all of its employees in such amounts as it may designate, and in such form as may be prescribed by the Attorney General, whenever in

its discretion such bonds may be deemed necessary and advisable, and the premiums on such bond or bonds shall be paid out of the Texas Old Age Assistance Fund.

#### Hearings on applicants' appeals

(c) The Commission shall provide for the holding of hearings in all appeals by applicants for aid or assistance where such aid or assistance has been denied by the local administrative agency to which application was made; provided that such hearings may be conducted by any one of the members of the Commission or for any employee designated by the Commission to hold the same. When such hearings are conducted by less than a majority of the Commission or by any employee, a transcript of all testimony taken shall be prepared and filed with the Commission and any order therein must be signed by a majority of the Commission.

#### Methods of administration

(d) The Commission shall provide for such methods of administration (other than those relating to selection, tenure of office and compensation of personnel) as are found by the United States Social Security Board to be necessary for the efficient operation of the plan of Old Age Assistance herein established.

#### Reports to Social Security Board

(e) The Commission shall make such reports in such form and containing such information as the Social Security Board may from time to time require, and comply with such provisions as said Social Security Board may from time to time find necessary to assure the correctness and verification of such reports. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 6.]

#### Art. 6243—9. Local administration; qualifications of employees

The Commission shall have full power and authority to provide such method of local administration in the various counties and districts of Texas as it deems advisable, and shall provide such personnel as may be found necessary for carrying out in an economical way the administration of this Act; provided, however, that all employees of the Commission shall have been residents of the State of Texas for a period of at least four (4) years next preceding their employment. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 7.]

#### Art. 6243—10. Expenses of administration; limitation

The expenses of administering this Act shall never exceed five per cent (5%) of the total amount expended for Old Age Assistance; provided, however, that the Commission is empowered to accept any funds appropriated and allocated to the State of Texas for administrative expense by the Federal government or the Social Security Board, and same may be expended for administrative purposes in addition to that allowed for administrative purposes out of State funds expended. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 8.]

#### Art. 6243—11. Applications for assistance; form; applications under prior act

Any person over the age of sixty-five (65) years may present or mail an application in writing for an old age assistance grant to the local administrative agency designated by the Commission to receive the same.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Such application shall be upon forms prescribed by the Commission, shall be duly sworn to before some officer authorized by the laws of this State to administer oaths, and shall contain such information as may be required by the Texas Old Age Assistance Commission, and such application shall state that it is made for old age assistance under the provisions of House Bill No. 8, Acts, Forty-fourth Legislature, Third Called Session.<sup>1</sup> The Texas Old Age Assistance Commission may accept any applications for assistance that have been heretofore filed with the Texas Old Age Assistance Commission created by House Bill No. 26, Act, Forty-fourth Legislature, Second Called Session,<sup>2</sup> under the provisions of that Act, if it appears to the said Commission that such applications satisfy the provisions of this Act; provided, however, that the Commission shall be authorized to require the filing of a new application in any or all of such cases. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 9.]

<sup>1</sup> This Act.

<sup>2</sup> Article 6243—1.

Fees for assisting in collecting assistance limited, see P.C. art. 1720a.

**Art. 6243—12. Investigation of application by local administrative agency; order; review; hearing**

Upon the filing of such application for aid or assistance, it shall be the duty of the local administrative agency in the county or district in which such application is made to investigate, or cause to be investigated in the manner required by the Commission, such sworn statements appearing in such application to determine the truth or falsity of statements therein contained, said agency having the power and authority to compel the attendance of witnesses, administer oaths, and compel the production by subpoenas duces tecum of books and records and the furnishing of such other affidavits and information as it may deem necessary and advisable. After an examination of the application and such investigation as to the truth or falsity of the statements contained therein as may be deemed necessary, the local agency shall enter an order upon such application either granting the same in whole or in part, or denying the same, and a copy of such order shall be furnished to the applicant and a copy to the Commission, provided, that nothing herein shall be construed as denying or interfering with the right of the Commission to review such order prior to the entering thereof and require any modification not inconsistent with the law and the rules and regulations of the Commission. Any applicant who is dissatisfied with the order made by the local administrative agency shall have the right to appeal to the Commission by giving written notice of such dissatisfaction to said Commission. When the Commission has been notified of the dissatisfaction of any applicant with an order made by a local agency, it shall command the local agency to transmit to the Commission the originals or certified copies of all records, affidavits, instruments, testimony or other evidence taken in connection with such application. The Commission shall make a full and complete examination of the record before it and if, after such examination, it is of the opinion that the aid or assistance should be allowed or increased, it shall enter an order allowing or increasing the assistance or aid to the applicant and shall forward a copy of this order to the applicant and a copy thereof to the local administrative agency. If after examining the records before it, the Commission is of the opinion that aid or assistance should not be awarded to the particular applicant or that the amount thereof as awarded by the local agency should not be increased, the Commission shall set the matter down for hearing and shall give written notice of the time and place of such hearing to the applicant, at which hearing the applicant shall have the right to appear in person and testify, or to present any

other evidence or testimony written or otherwise, to sustain his application. As soon after such hearing as possible and practicable the Commission shall enter a final order on such application, mailing a copy thereof to the applicant and a copy to the local administrative agency, from which said final order there shall be no right of appeal. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 10.]

#### Art. 6243—13. Amount of assistance

(a) The amount of old age assistance or aid from State funds that may be paid to any applicant, who has qualified under the terms of this Act, shall never exceed the sum of Fifteen Dollars (\$15) per month, and in addition thereto such funds as the Federal government may appropriate and allocate to the State of Texas from time to time shall be distributed among recipients of assistance in like manner as State Funds are paid under the terms of this Act; provided, that in no case shall such aid or assistance be in an amount which, when added to the income of the applicant from all other sources, including income from property and from the State and Federal government, shall exceed a total of Thirty Dollars (\$30) per month; provided that the assistance granted herein shall be granted in such amounts as will provide reasonable subsistence not incompatible with good health and decency.

##### Texas Old Age Assistance Fund

(b) For the purpose of paying the aid and assistance to needy citizens of Texas herein provided for, and for the purpose of defraying the expenses of administering this Act, there is hereby created and established a special fund in the Treasury of the State of Texas, to be kept by the State Treasury separate and apart from all other funds, and to be known as the "Texas Old Age Assistance Fund," and for the purposes above set out there is hereby appropriated out of such funds all amounts received and credited to said fund, or so much thereof as may be necessary, for the fiscal year ending August 31, 1937. Provided that if the fund is insufficient to pay all grants in full, the same shall be paid pro rata based on the amount granted to each recipient. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 11 as amended Acts 1937, 45th Leg., p. 60, ch. 37, § 1.]

Section 2 of the amendatory act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

Paragraph (c) of section 11, article 2 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, made certain appropriations.

Paragraph (d) of section 11, article 2 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, provided that all moneys paid out of the General Fund under this article should be repaid out of the first moneys accruing to the benefit of the Texas Old Age Assistance Fund, and authorized the State Treasurer to transfer the funds necessary to make the repayment.

Section 14 of article 2 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, authorized the State Treasurer to transfer all funds to the credit of the Texas Old Age As-

sistance Fund created by Acts 1935, 44th Leg., 2nd C.S., p. 1854, ch. 472 (art. 6243—1, ante; Vernon's Rev. Pen. Code, art. 427d) to the Texas Old Age Assistance Fund created by this Act.

Section 22 of article 2 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, repealed section 10 of Acts 1935, 44th Leg., 2nd C.S., p. 1854, ch. 472 (article 6243—1, § 10, ante), and provided that: "The Commission, together with the Comptroller and the Treasurer, shall convert into cash all securities in which the funds of the Permanent Old Age Pension Fund have heretofore been invested, and all funds and moneys which have heretofore been deposited to the credit of the Permanent Old Age Pension Fund are hereby appropriated to the Texas Old Age Assistance Fund."

#### Art. 6243—14. Applications and beneficiaries under prior act; rights under this act not to be construed as vested; assistance grant inalienable; bankruptcy; gifts or contributions to fund

(a) It shall be the duty of the Commission to review and examine the applications of all persons to whom grants of assistance have here-

tofore been made under the provisions of House Bill No. 26, Acts, Forty-fourth Legislature, Second Called Session,<sup>1</sup> and to determine, under the provisions of this Act, the eligibility of such applicants for old age assistance; provided that the Commission shall be authorized to promulgate and adopt such rules and regulations as may be necessary immediately to make grants of assistance to such of those persons as may be eligible under the provisions of this Act. All of such persons who have been heretofore receiving old age assistance under the provisions of House Bill No. 26, Acts of the Forty-fourth Legislature, Second Called Session, who shall not be found to be immediately eligible under such procedure as may be adopted by the Commission under the provisions of the preceding sentence herein, shall be investigated in the manner prescribed by Section 10 of this Act.<sup>2</sup>

Whenever it is found, by investigation of the local administrative agency, or otherwise, that assistance has been granted to any person who is not eligible therefor, the Executive Director shall immediately order such assistance terminated and shall furnish a copy of such order to the applicant and a copy to the local administrative agency, and from such order the applicant shall have the right to appeal to the Commission, and when assistance to any person has been terminated, no further payments shall be made to such person until the Board shall have determined on appeal that such payments be resumed.

(b) The provisions of this Act providing for old age assistance shall not be construed as a vested right in the recipient of old age assistance.

(c) An old age assistance grant shall be absolutely inalienable by any assignment, power of attorney, sale, charge, or execution or other legal process, and in case of bankruptcy the assistance shall not pass through any trustee or other person acting on behalf of creditors.

(d) The Commission is authorized to accept on behalf of the Old Age Assistance Fund any gifts, deeds or bequests of any money or other property, the proceeds of which shall accrue to the benefit of the Old Age Assistance Fund. In making such gifts or contributions the donor shall attach no conditions whatever. The sole management and disposition of the property so received shall be in the Commission. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 12.]

<sup>1</sup> Article 6243—1.

<sup>2</sup> Article 6243—12, ante.

#### Art. 6243—15. Payment of assistance benefits; list of persons entitled to assistance

(a) All old age assistance benefits provided for under the terms of this Act shall be paid by vouchers or warrants drawn by the State Comptroller on the Texas Old Age Assistance Fund; for the purpose of permitting the State Comptroller properly to draw and issue such vouchers or warrants, the Texas Old Age Assistance Commission shall furnish the Comptroller with a list or roll of those entitled to assistance from time to time, together with the amount to which each recipient is entitled. When such vouchers or warrants have been drawn, they shall be delivered to the Executive Director of the Texas Old Age Assistance Commission, who in turn shall supervise the delivery of the same to the persons entitled thereto.

(b) The Commission shall furnish monthly to the county clerk of each county a list showing the names of all persons in such county receiving old age assistance and the amount thereof. Such list shall be a public record in such county and as such shall be available for public

inspection at all reasonable hours. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 13.]

For section 14 of article 2 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, see note to article 6243—13, ante.

#### Art. 6243—16. Effect of federal assistance

All grants of assistance or aid from the Federal government and its agencies shall not be considered as a part of the State assistance herein granted, but shall be regarded as a separate grant of assistance or aid. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 15.]

#### Art. 6243—17. Assistance subject to amending or repealing act

Every assistance granted under the provisions of this Act shall be deemed to be granted and shall be held subject to the provisions of any amending or repealing Act that may be hereafter enacted, and no recipient under this Act shall have any claim for compensation or otherwise by reason of his assistance being affected in any way by such amending or repealing Act. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 16.]

#### Art. 6243—18. Construction of act

Whenever in this Act the masculine pronoun is used, it shall be held to include the feminine pronoun also. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 17.]

#### Art. 6243—19. Conviction as termination of assistance

If any recipient under this Act is convicted of any crime, misdemeanor or felony, or other offenses, punishable by imprisonment for a period of six (6) months or longer, such fact shall be reported to the Old Age Assistance Commission and the said Commission may direct that payments to such recipient be defaulted and withheld for such period. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 18.]

Section 19 of article 2 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, being a penal provision, is published as Vernon's Rev. Pen. Code, art. 427e.

#### Art. 6243—20. Repeal

All laws and parts of laws in conflict herewith are hereby repealed. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 20.]

#### Art. 6243—21. Partial invalidity

If any section, subsection, paragraph, clause or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 21.]

Section 22 of article 2 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, repealed section 10 of Acts 1935, 44th Leg., 2nd C.S., p. 1854, ch. 472, (article 6243—1, § 10, ante), and provided that: "The Commission, together with the Comptroller and the Treasurer, shall convert into cash all securities in which the funds of the Perma-

nent Old Age Pension Fund have heretofore been invested, and all funds and moneys which have heretofore been deposited to the credit of the Permanent Old Age Pension Fund are hereby appropriated to the Texas Old Age Assistance Fund."

#### Art. 6243—22. Permanent Old Age Pension Fund; liquidation

Sec. 1. The Treasurer of the State of Texas is empowered and directed to immediately sell and liquidate any and all bonds or interest

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bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States that have been deposited in the Permanent Old Age Pension Fund and the gross proceeds from such sale and liquidation shall be immediately redeposited in the Permanent Old Age Pension Fund.

**Transfer to Texas Old Age Assistance Fund**

Sec. 2. It is further provided that there is hereby appropriated and transferred all monies, choses in action, funds and things of value now a part of and accumulated in the Permanent Old Age Pension Fund into the Texas Old Age Assistance Fund to be used by the Old Age Assistance Commission for the sole purpose of paying Old Age Assistance Grants to applicants whose applications have been and may be approved and allowed; and be it further provided that no portion of said money shall be expended for administrative purposes; and be it further provided that the State Treasurer and all other accounting officers in the State are hereby authorized and directed to take such action as may be necessary to effectuate this appropriation and transfer. [Acts 1936, 44th Leg., 3rd C.S., p. 1989, ch. 479.]

**Art. 6243—23. Warrants against Texas Old Age Assistance Fund; interest**

Sec. 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby appropriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars (\$15) of State money.

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under authority of this Act to accomplish its purpose.

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.<sup>1</sup>

Sec. 5. For the purposes of this Act and until the appropriation made in House Bill No. 8, now pending in this, the Third Called Session of the Forty-fourth Legislature,<sup>2</sup> becomes available, the unexpended balance of the appropriation made in Chapter 472 of the Acts of the Second Called Session of the Forty-fourth Legislature for the purpose of paying Old Age Assistance and defraying the expense of the administration of the Old Age Assistance Act is hereby reappropriated. The unexpended balance of the appropriation made in said House Bill No. 8 remaining on hand on August 31, 1937, is hereby reappropriated for the

purposes of this Act for the fiscal year ending August 31, 1938, to assure the payment of any warrants issued under the provisions of this Act. Provided, however, that the power conferred in this Act does not authorize the issuance of more than Three Million Dollars (\$3,000,000) of warrants upon which or on account of which interest may be paid, and provided further that no such warrants shall be issued after March 1, 1937.

Sec. 6. This law shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other law, the provisions of this Act shall have precedence and shall be fully effective. [Acts 1936, 44th Leg., 3rd C.S., p. 2084, ch. 496.]

<sup>1</sup> Article 6243—1, § 6.

<sup>2</sup> Articles 6243—2 et seq., ante.

#### Art. 6243—24. Warrants against Texas Old Age Assistance Fund; Interest; Calling warrants

Section 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said Fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby appropriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars (\$15) of State money.

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under the authority of this Act to accomplish its purpose.

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.<sup>1</sup>

Sec. 5. Provided that the power conferred in this Act does not authorize the issuance of more than Nine Hundred Thousand Dollars (\$900,000) of warrants upon which or on account of which interest may be paid, and provided further that no such warrants shall be issued after September 1, 1939.

Sec. 6. a. It is provided that the Treasurer of the State of Texas shall call all warrants now outstanding that have heretofore been issued under the authority and provisions of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session,<sup>2</sup> and he is directed and authorized to pay said warrants, together with interest thereon, out of the Texas Old Age Assistance Fund, according to the following schedule:

On October 10, 1939, warrants in the amount of One Hundred Thirty Thousand, Nine Hundred and Eighty-seven Dollars (\$130,987) shall be called and paid by the Treasurer, together with interest thereon, and on



the 10th day of each month thereafter, the Treasurer is directed and authorized to call and pay the remaining outstanding warrants in the amount of Two Hundred Thousand Dollars (\$200,000) per month, together with interest thereon, until such time as all outstanding warrants hereinabove referred to shall be called and paid in full, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

b. The Treasurer of the State of Texas is directed and authorized to call and pay all warrants that might hereafter be issued under and by virtue of the provisions of this Act in approximate equal monthly installments on the 10th day of the months May, 1940, to September, 1940, both inclusive, together with interest thereon, out of the Texas Old Age Assistance Fund, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

Sec. 7. (1) That the Old Age Assistance Commission be and is hereby authorized and directed to offer to and deliver to the holder, or holders, of the warrants which may be issued under the provisions of this Act and of the warrants heretofore issued for Old Age Assistance under authority of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session,<sup>2</sup> and now outstanding, the State's obligation in the same principal amount, or amounts, in such forms and denominations as shall be determined by such Commission, approved by the Attorney General, and acceptable to such holder, or holders, bearing interest at not to exceed one and six-tenths (1.6) per cent per annum or not to exceed the rate of interest which shall be paid on or on account of the warrants which may be issued under the terms of this Act, whichever rate is the lower. Said obligations shall bear dates to be fixed by the Commission and shall mature exactly according to the schedules set out in Section 6 hereof.

(2) Upon exchange of the original warrants for the obligations authorized hereunder the State Treasurer shall retain in his possession in escrow as trustee said original warrants until the obligations herein authorized are paid in full. And the holder, or holders, of such obligations, in addition to all other rights, shall be subrogated to the rights of the holders of such original warrants. Upon payment of such obligations said original warrants shall be cancelled by the State Treasurer. There is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

(3) Interest on such original warrants shall be paid in accordance with the contract or contracts under which they were issued up to the date of the exchange for the obligations authorized herein.

(4) Such obligations to be substituted therefor shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts, and political subdivisions of and in the State of Texas on the basis of one dollar principal amount of such obligations for each dollar of deposited funds.

(5) The Governor, State Treasurer, Attorney General, Texas Old Age Assistance Commission, Comptroller of Public Accounts, and the Secretary of State are hereby directed to do any and all things necessary to accomplish the purposes of this Section.

(6) When such obligations shall have been issued in accordance with a resolution adopted by the Texas Old Age Assistance Commission and shall have been approved by the Attorney General, they shall be incontestable and the full faith and credit of the State shall be pledged to their payment.

Sec. 8. This Act shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other laws, the provisions of this Act shall have precedence and shall be fully effective. Acts 1939, 46th Leg., p. 536.

1 Art. 6243—1, § 6.

2 Art. 6243—23.

Effective Feb. 17, 1939.

Section 9 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the Old Age Assistance Commission to pay interest on warrants issued against the Texas Old Age Assistance Fund; restricting the total amount to be paid on account of any warrant issued for a given month; prescribing the powers and duties of certain State officials in reference thereto; restricting maximum amount of new warrants to be issued hereunder to Nine Hundred Thousand Dollars (\$900,000), and the maximum rate of interest to be paid on or on account of such warrants; providing that no such warrants on which interest is to be paid shall be issued after September 1, 1939; providing that authority conferred in this Act shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature; providing for the prior payment of warrants issued under authority of Chapter 496, Page 2084, Acts of the Forty-fourth Legislature, Third Called Session, and making an appropriation

therefor; and after the payment of said warrants providing for the payment of the warrants authorized under this Act and making an appropriation therefor; conferring on the Texas Old Age Assistance Commission authority to offer and deliver to the holder or holders of warrants issued under Chapter 496, Acts of the Forty-fourth Legislature, Third Called Session, and to the holder or holders of warrants issued hereunder, certain substituted obligations of the State, limiting the interest rate to be paid thereon; prescribing duties of the State Treasurer in reference thereto, and making an appropriation to pay such obligations; providing for payment of interest at the existing contract interest rate on warrants issued under the provisions of said Chapter 496, until and unless surrendered for such substituted obligations; making such substituted obligations eligible to secure deposits of public funds; prescribing duties of named State officials; prescribing the effect on such obligations of approval by the Attorney General; making this Act cumulative of other laws but providing that it shall take precedence over any law conflicting herewith; and declaring an emergency. Acts 1939, 46th Leg., p. 536.

## TITLE 112—RAILROADS

### CHAPTER ELEVEN—RAILROAD COMMISSION OF TEXAS

**Art.**

6472b. Depositions in matters pending before Transportation Division of Commission [New].

#### Art. 6472b. Depositions in matters pending before Transportation Division of Commission

Section 1. In all matters pending for hearing before the Motor Transportation Division of the Railroad Commission of Texas, the applicant or any party at interest (as hereinafter defined) shall have the right to produce the testimony of witnesses by written deposition instead of compelling personal attendance by such witnesses. For this purpose, the Secretary of the Railroad Commission is hereby empowered and authorized to issue commission and other process necessary for the purpose of taking such deposition; provided, however, the failure to secure the personal attendance of a witness shall not be deemed a want of diligence.

#### Notice; cross interrogatories; issuance of commission

Sec. 2. The party desiring to take the written depositions pertaining to any cause pending before the Motor Transportation Division of the

Railroad Commission shall file with the Secretary of the Commission a notice of his intention to apply for a commission to take such depositions, and a copy of such written interrogatories shall be attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the application and the docket number in which the interrogatories are to be used, and a copy of such notice and the attached interrogatory shall be served upon each party at interest, or his attorney of record, or attorney in fact, at least five (5) days before the issuance of a commission. Any party at interest desiring to file cross interrogatories shall cause the same to be filed with the Secretary of the Commission on or before the date for the issuance of such commission. Such service may be had by leaving, during office hours, a copy of the notice and the attached interrogatories at the principal office in this State of each party at interest, as the records of the Commission reflect the location and address of such principal offices. Five (5) days after the service of the notice of filing the interrogatories has been completed, the Secretary of the Commission shall issue a commission to take the depositions of the witness or witnesses named in the notice. More than one witness residing in the same county may be included in the same commission.

**Commission, style and form of**

Sec. 3. The style of the commission shall be "The State of Texas". It shall be dated and attested as other processes, and addressed to such officer authorized under Article 3647, Revised Civil Statutes of Texas, 1925, to execute such commission, and shall authorize or require them or either of them to summon the witnesses before him forthwith to take his answers under oath to the written direct and cross interrogatories propounded to him in writing by the respective parties, or their attorneys of record in said cause. Such Commission shall authorize the officers before whom the depositions are being taken, to require such witness or witnesses to remain in attendance from day to day until such written depositions have been completed.

**Provisions cumulative; exception**

Sec. 4. The provisions of this Act are not intended to repeal but to be cumulative of the Articles of the Revised Civil Statutes of Texas, 1925, relating to the procedure for taking depositions of witnesses by written direct and cross interrogatories, except as may be otherwise provided herein; provided, however, that the provisions of Articles 6472 and 6472a, Revised Civil Statutes, of Texas, 1925, shall not be applicable to proceedings before the Motor Transportation Division of the Railroad Commission of Texas.

**"Party at interest," defined**

Sec. 5. The term "party at interest" means any railroad or other common carrier lawfully operating under the jurisdiction of the Railroad Commission of Texas and/or the Interstate Commerce Commission directly through or into any incorporated city or town situated on the route covered by the application in which such written interrogatories are to be taken.

**Carrier to designate attorney in fact for service in taking depositions; effect of failure to designate; request for names and addresses of parties at interest**

Sec. 6. It shall be the duty of all common carriers for hire operating within this State to file with the Motor Transportation Division of the

Railroad Commission the name and address of an attorney in fact upon whom service may be had in taking depositions. Failure of such carrier to file such designation with the Railroad Commission within a reasonable time after the effective date of this Act shall make it unnecessary to give such party notice of intention to take such deposition. Any person desiring to take depositions as herein provided shall file a written request with the Railroad Commission for the names and addresses of all "parties at interest" affected by the application in question, and the name and address of the attorney in fact of the respective parties at interest upon whom service may be had, and the party taking such deposition shall have the right to rely upon the accuracy of such list of parties at interest. Acts 1937, 45th Leg., p. 503, ch. 254.

Effective May 3, 1937.

Section 7 repeals all conflicting laws and parts of laws. Section 8 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to provide for the taking of written depositions in matters pending before the Motor Transportation Division of the Railroad Commission; providing for the issuance of notice and hearing thereof; the

filing of direct and cross interrogatories; designation of attorneys in fact upon whom service may be had; making provisions of this Act cumulative of other Articles of the Revised Civil Statutes, 1925, relating to the procedure for taking depositions; defining "parties at interest"; repealing all laws in conflict herewith; and declaring an emergency. [Acts 1937, 45th Leg., p. 503, ch. 254.]

### CHAPTER THIRTEEN—MISCELLANEOUS RAILROADS

Art.

6541b. Street and interurban railways abandoned permitted to continue distribution of gas and electricity [New].

Art.

6548a. Certain street and interurban railway corporations authorized to amend charters to include operation as motor carriers [New].

**Art. 6541b. Street and interurban railways abandoned permitted to continue distribution of gas and electricity**

That all private corporations which have heretofore been incorporated and are now authorized by their charters and the Statutes of this State to operate street and interurban railways with power to distribute and sell gas and/or electricity to the public and which have heretofore abandoned or discontinued or may hereafter abandon or discontinue the operation of street and interurban railways and motor buses substituted therefor are hereby authorized to continue to distribute and sell electricity and/or gas in accordance with their charters and the Statutes during the unexpired period of their corporate charters just as though they continued the operation of said street and interurban railways or motor buses, or both. Acts 1937, 45th Leg., p. 414, ch. 209, § 1.

Effective April 26, 1937.

Section 2 of this Act declared an emergency making the act effective on and after its passage.

Title of Act:

An Act providing that all private corporations which have heretofore been incorporated and are now authorized by their charters and the Statutes of this State to operate street and interurban railways with power to distribute and sell gas and/or electricity to the public and which

have heretofore abandoned or discontinued or may hereafter abandon or discontinue the operation of street and interurban railways and motor buses substituted therefor are hereby authorized to continue to distribute and sell electricity and/or gas during the unexpired period of their corporate charters just as though they continued the operation of said street and interurban railways or motor buses, or both, and declaring an emergency. [Acts 1937, 45th Leg., p. 414, ch. 209.]

Art. 6548a. Certain street and interurban railway corporations authorized to amend charters to include operation as motor carriers

Section 1. That private corporations heretofore incorporated for the purpose of operating street or interurban railways, which said private corporations have totally abandoned such operations prior to January 1, 1934, may amend their charters so as to include as a separate purpose of the corporation the acquiring, owning and operating of motor vehicles and motor buses for transportation of passengers for hire upon the public streets and public ways of cities and towns and upon the public ways of the adjacent unincorporated territory within five (5) miles from the limits of such cities and towns, provided however, this limit shall not be construed to prohibit any corporation conforming with this Act from contracting for chartered passenger service beyond said five (5) mile limit, under such reasonable regulations as may be legally imposed from time to time by such cities and towns within the limits thereof and the Commissioners' Courts of counties as now prescribed by Article 6548.

**Contiguous cities or towns**

Sec. 2. If the boundary of one city or town is contiguous with the boundary or boundaries of another city or town, or other cities or towns, the authority granted under Section 1, hereof to operate within five (5) miles thereof, shall be construed to include any territory within five (5) miles of the limits of any such contiguous city or town.

**Regulatory authority of Railroad Commission not affected**

Sec. 3. Nothing in this Act shall be construed to deprive the Railroad Commission of Texas, of its exclusive authority to continue the regulation of buses and motor vehicles operating under its jurisdiction; nor shall this Act relieve such operators of the requirement to secure certificates or permits from the Railroad Commission authorizing such operations.

**Itemized statement of money and property and value of property to be filed**

Sec. 4. Provided before any such amendment may be filed with the Secretary of State the Officers and Directors of any corporation shall file an affidavit with the Secretary of State giving a detailed itemized statement of what money and property is held or owned by it and the actual cash market value of each such item of property. [Acts 1937, 45th Leg., p. 675, ch. 337.]

Became law without Governor's signature May 15, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing private corporations heretofore incorporated for the purpose of operating street or interurban railways, where said private corporations have totally abandoned such operations prior to January 1st, 1934, to amend their charters so as to include as a separate purpose of the corporation the acquiring, owning and operating of motor vehicles and motor buses for transportation of passengers for hire upon the public streets and public ways of cities and towns and upon the public ways of the adjacent unincorporated

territory within five (5) miles from the limits of such cities and towns, provided, however, this limit shall not be construed to prohibit any corporation conforming with this Act from contracting for chartered passenger service beyond said five (5) mile limit, under such reasonable regulations as may be legally imposed from time to time by such cities and towns within the limits thereof and by the Commissioners' Courts of counties as to operations outside of the limits of such cities and towns; providing that nothing in this Act shall be construed as affecting the Railroad Commission's authority to continue regulation of buses and motor vehicles operating under its jurisdiction; and declaring an emergency. [Acts 1937, 45th Leg., p. 675, ch. 337.]

**TITLE 113A—REAL ESTATE DEALERS [NEW]**

Art.

6573a. Real estate dealers licenses—short  
title of act.

Art. 6573a. Real estate dealers licenses—short title of act

Section 1. This Act shall be known and may be cited as “The Real Estate Dealers License Act.”

**Definitions**

Sec. 2. The following terms shall, unless the context otherwise indicates, have the following meanings:

(a). (1). The term “Real Estate Dealer” shall include every person or company, other than a salesman, and licensed and registered attorneys, who for another or others for compensation or other valuable consideration, or who with the intention or in the expectation or upon the promise of receiving or collecting compensation or other valuable consideration, lists for sale, sells, exchanges, buys, or rents, or offers, or attempts, or agrees to negotiate a sale, exchange, purchase, or rental of an estate or interest in real estate, or collects, or offers, or attempts, or agrees to collect rent for the use of real estate, or negotiates, or offers, or attempts, or agrees to negotiate a loan, secured or to be secured by mortgage or other incumbrance upon or transfer of real estate; or auctions, or offers, or attempts, or agrees to auction any real estate; or appraises, or offers, or attempts, or agrees to appraise any real estate; or who advertises, or holds itself, himself, or themselves out as engaged in the business of selling, exchanging, buying, renting, or leasing real estate, or assists or directs in the procuring of prospects, or the negotiation or closing of any transaction which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate, or who buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or in the improvements thereon.

(2). The term “Real Estate Dealer” shall also include any person or company employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission basis, or otherwise, to sell such real estate in any parts thereof, in lots or other parcels, and who shall sell or exchange, or offers, or attempts, or agrees to negotiate the sale or exchange of any such lot or parcel of real estate; provided, however, if the owner of lots or other parcels is engaged in the business of buying, selling, exchanging, leasing, renting of property and holding himself out as a full or part-time dealer in real estate, then such person employed by said owner may be licensed as a salesman of said owner if said owner has been licensed as a dealer in real estate.

(3). The term “Real Estate Dealer” shall also include any person or company engaged in the business of buying, selling, exchanging, leasing, renting of property on his or its own account and holding himself or itself out as a full or part-time dealer in real estate.

(b). The term “Real Estate Salesman” shall mean and include any person or company employed or engaged by or in behalf of a licensed real estate dealer to do or deal in any act, acts, or transactions set out and comprehended by the definition of a “Real Estate Dealer” in Section 2, Subsection (a) of this Act.

(c). If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neu-

ter gender; in the singular number, include the plural number; in plural number, include the singular number; "and" may be read "or"; and "or" may be read "and."

**Persons not covered by act**

Sec. 3. The provisions of this Act shall not apply to, and the terms "Real Estate Dealer" and "Real Estate Salesmen," as above defined, shall not include:

(a). Any person or company who, as owner or lessor, shall perform any of the acts set out in Section 2, Subdivision (a) with reference to property owned or leased by them, or to the regular employees thereof with reference to the property owned or leased by such person or company where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein, unless such person or company is engaged in the business of buying, selling, exchanging, leasing, or renting of property and holding himself or itself out as a full or part-time dealer in real estate.

(b). Persons acting as an attorney in fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing, or exchange of real estate; services rendered by an attorney at law, receiver, trustee in bankruptcy, administrator, or executor, or any person doing any of the acts specified in Section 2, Subdivision (a) of this Act under order of any court; a trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof.

(c). Any person, partnership, or corporation who has secured a license under Texas Securities' Act, House Bill No. 521, Regular Session, Forty-fourth Legislature.<sup>1</sup>

<sup>1</sup> Article 600a, Vernon's Pen. Code, art. 1083a

**"Real estate dealer;" "real estate salesman"**

Sec. 4. Any one act set out in Section 2, Subdivision (a) of this Act when performed for another or others for compensation or valuable consideration or who with the intention or in the expectation or upon the promise of receiving or collecting compensation shall constitute a person or company performing, offering or attempting to perform such act or acts, a real estate dealer or a real estate salesman within the meaning of this Act.

**Administration of act**

Sec. 5. (a). The administration of the provisions of this Act shall be vested in the Securities Division of the office of the Secretary of State.

(b). The Secretary of State is hereby empowered to employ an Executive Secretary; the salary of such Executive Secretary shall not exceed the sum of Two Hundred Dollars (\$200) per month.

(c). The Administrator of the Securities Division is hereby empowered to examine witnesses and administer oaths, and it shall be his duty to investigate persons doing business in real estate in this State to ascertain whether they are violating any of the provisions of this Act and to keep such records and minutes as shall be necessary to an orderly dispatch of business.

**Application for license**

Sec. 6. (a). Any applicant desiring to act as a real estate dealer in this State shall file with the Administrator of the Securities Division of the office of the Secretary of State an application for a license therefor. The application shall be in such form as the Administrator

of the Securities Division of the office of the Secretary of State may prescribe, and shall set forth:

(1). The name and address of the applicant, if the applicant shall be a partnership or association, the name of each member thereof; if it is a corporation, the name of each director thereof.

(2). The name under which the business shall be conducted.

(3). The place or places, including the street and number, town, village, or city and county where the business is to be conducted.

(4). The business or occupation engaged in by the applicant for a period of three (3) years immediately preceding the date of application. If an applicant be a partnership or association, by each member thereof; if a corporation by each officer thereof.

(5). The time and place and experience of the applicant in the real estate business as a dealer or salesman. If an applicant be a partnership or association, by each member thereof; or if a corporation, by each officer thereof.

(6). Whether the applicant has ever been convicted or is under indictment for embezzlement, obtaining money under false pretense, larceny, extortion, conspiracy to defraud, or other like offense or offenses. If an applicant be a partnership or association, whether any member thereof has been convicted or indicted; if the applicant be a corporation, whether any officer or director has been convicted or indicted.

(7). Whether the applicant has been refused a real estate dealer's or salesman's license, or any other occupational or professional license in any other State; or whether his license as a dealer or salesman or any other occupational or professional license has been suspended or revoked in any other State. If the applicant be a partnership or association, whether any member has had his license as a dealer or salesman suspended or revoked or refused in any other State. If the applicant be a corporation, whether any officer or director thereof has had his license as a dealer or salesman, or any other occupational or professional license, suspended, or revoked or refused in any other State.

(8). If the applicant is a partnership, association, or corporation, the name of the designated member or officer thereof who is to receive his license by virtue of the issuing of a license to the partnership, association, or corporation as is provided for in Section 5, Subdivision (d) of this Act.

(9). If the applicant is a member of a partnership, association, or corporation, or an officer of a corporation, the name and office address of the partnership, or association or corporation of which said applicant is a member or officer.

(10). Such application for a dealer's license shall be made by applicant. If such application is made by a partnership or association, it shall be filed by two (2) members thereof. If made by a corporation, it shall be filed by the president and secretary thereof.

(b). Such application shall be accompanied by the recommendations of at least three (3) citizens, not related to the applicant, who have owned real estate for a period of three (3) years or more in the county in which the applicant resides or intends to reside or establish his place of business, and who have known applicant for a period of three (3) years or more, which recommendation shall be under oath, and shall certify that the applicant has a reputation for honesty, truthfulness, fair dealing, and competency, and recommending that license be granted to the applicant.

(c). If the applicant cannot procure such recommendations for the reason that he has not resided in the county for three (3) years he may furnish three (3) recommendations from any person where the appli-



cant may have resided for three (3) years prior to the filing of his application.

(d). Every partnership and association in its application shall designate and appoint one of its members, and every corporation in its application shall designate and appoint one of its officers to submit an application for a dealer's license. The application of the said partnership, association, or corporation and the application of said member or officer so designated shall be filed with the Administrator of the Securities Division of the office of the Secretary of State together. Upon compliance with all requirements of law by the partnership, association, or corporation, as well as by said designated member or officer, the Administrator of the Securities Division of the office of the Secretary of State shall issue a dealer's license to said partnership, association, or corporation, which shall bear the name of each member or officer, and thereupon the member or officer so designated shall, without payment of any further fee, be entitled to perform all the acts of a real estate dealer contemplated by the provisions of this Act; provided, however, said license shall entitle such member or officer so designated to act as a real estate dealer only as officer or agent of said partnership, association, or corporation and not in his own behalf; and provided further that if in any case the person so designated shall be refused a license by the Administrator of the Securities Division of the office of the Secretary of State, or in case such person ceases to be connected with such partnership, association, or corporation, said partnership, association, or corporation shall be entitled to designate another person to qualify and act as in the first instance.

(e). Each and every member or officer of a partnership, association, or corporation who will perform or engage in any of the acts specifically set out in Section 2, Subdivision (a) of this Act, other than the designated member or officer of the partnership, association, or corporation, in the manner above provided, shall be required to make application for and take out a separate dealer's license in his or her own name individually; provided, however, that the license issued to such member or officer of a partnership, association, or corporation shall entitle such member or officer to act as a real estate dealer only as officer or agent of said partnership, association, or corporation and not on his own behalf.

(f). Every application for a salesman's license shall be made in writing upon a form prescribed by the Administrator of the Securities Division of the office of the Secretary of State and shall contain such information as is required in a dealer's application, and shall also set forth the period of time, if any, such applicant has been in such business, stating the name and address of his last employer, the name and place of business of the person or company then employing him, and in what capacity he is employed or into whose service he is about to enter. The application shall be accompanied by a verified written statement by the dealer into whose service he is about to enter, certifying that in his opinion the applicant is honest, truthful, and of good reputation and recommending that the applicant be granted a license. Every application for a salesman's license shall be verified by the applicant.

(g). Every application for a real estate dealer's license or a real estate salesman's license shall be accompanied by a fee prescribed in Section 16 of this Act.

#### Eligibility for license

Sec. 7. (a). No applicant shall be eligible to be licensed under the terms of this Act unless such applicant is at the time of the filing of such application an actual bona fide resident of this State and shall have

been an actual bona fide resident of this State for at least sixty (60) days immediately preceding the filing of such application. Provided, however, this provision shall not apply to nonresident applicants who may apply for license under the terms of Subdivision (b) hereinafter set forth.

(b). A nonresident of this State may be licensed as a real estate dealer or salesman provided such nonresident is at the time licensed under the laws of the State where he resides and which said State has legal requirements which have for their purpose the standards proposed in this Act; provided, however, that such nonresident must procure from the Administrator of the Securities Division of the office of the Secretary of State a certificate recognizing and approving the reliability and standing of such nonresident in such other State.

(c). A nonresident who applies for a license under the privilege accorded under Section 6 of this Act and to whom a license is issued under compliance with all other requirements of law and provisions of this Act, shall not be required to maintain a definite place of business within this State; provided, such nonresident, if a dealer, shall maintain an active place of business within the State of his domicile; and provided further that the privilege of so submitting the license of the place of his domicile of a nonresident applicant in lieu of the recommendations and requirements of this Act shall only apply to real estate dealers and real estate salesmen of the States under the laws of which similar recognition and courtesies are extended to licensed real estate dealers and real estate salesmen of this State.

(d). Every nonresident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commenced against such applicant of the proper court of any county in this State in which the cause may arise or in which the plaintiff may reside by service of process on the Administrator of the Securities Division of the office of the Secretary of State or his agent, and stipulating and agreeing that said service of process shall be taken and held by all courts to be as valid and binding as if due service had been made upon said applicant personally within this State. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, and by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by a certified copy of the resolution of the proper officers to execute the same. In case any process for service upon the Administrator of the Securities Division of the office of the Secretary of State, it shall be by duplicate copies, one of which shall be filed in the office of the Administrator of the Securities Division of the office of the Secretary of State, and the other immediately forwarded by registered mail to the main office of the applicant against whom said process is directed.

(e). Any person, firm, partnership, association, or corporation holding a real estate dealer's license, or a real estate salesman's license, or both, who are nonresidents of the State and are licensed by the State of their residence to deal in real estate are entitled to have a license issued to them to operate in this State, subject to the provisions of this Act, upon the payment of a fee of One Dollar (\$1) and the presentation of an affidavit to the Securities Division of the Secretary of State from the agency of the State of his residence showing that he is licensed to do business in that State.

#### **Additional information required of applicant**

Sec. 8. Application for a real estate dealer's or real estate salesman's license shall contain such other information as to the applicant,

in addition to the above described, as the Administrator of the Securities Division of the office of the Secretary of State shall require. The Administrator of the Securities Division of the office of the Secretary of State may require such other proof through the application or otherwise as its officers shall deem desirable with due regard to the paramount interest of the public as to the honesty, truthfulness, integrity, and competency of the applicant.

**Issuance of license; display of licenses; change of employment by salesman**

Sec. 9. (a). If the Administrator of the Securities Division of the office of the Secretary of State is satisfied that the applicant for real estate dealer's or real estate salesman's license is of good business repute and that the business will be conducted in an honest, fair, just, and equitable manner, and upon complying with all other provisions of law and conditions of this Act, a license shall thereupon be granted by the Administrator of the Securities Division of the office of the Secretary of State to the successful applicant therefor as a real estate dealer or real estate salesman, and the applicant, upon receiving possession of license, is authorized to conduct the business of a real estate dealer or real estate salesman in this State.

(b). The Administrator of the Securities Division of the office of the Secretary of State may, within the first thirty (30) days after the effective date of this Act, issue to any applicant a temporary permit to operate as a real estate dealer or real estate salesman for a period not to exceed sixty (60) days after the last day of said thirty-day period, which permit shall be in such form as the Administrator of the Securities Division of the office of the Secretary of State shall prescribe, but after the expiration of the said sixty (60) days, the Administrator of the Securities Division of the office of the Secretary of State shall not have the authority to issue any temporary permits.

(c). The Administrator of the Securities Division of the office of the Secretary of State shall issue to each licensee a license in such form and size as shall be prescribed by the Administrator of the Securities Division of the office of the Secretary of State. This license shall show the name and address of the licensee, and in case of a real estate salesman's license shall show the name of the real estate dealer by whom he is employed. Each license shall have imprinted thereon the Seal of the State of Texas, and in addition to the foregoing shall contain such matter as shall be prescribed by the Administrator of the Securities Division of the Office of the Secretary of State. The license of each real estate salesman shall be delivered or mailed to the real estate dealer by whom such real estate salesman may be employed and shall be kept under the custody and control of such dealer.

(d). The Administrator of the Securities Division of the office of the Secretary of State shall prepare and deliver to each licensee a pocket card, which card, among other things, shall contain an imprint of the Seal of the State of Texas and shall certify that the person whose name appears thereon is a licensed real estate dealer or real estate salesman, as the case may be, and if it is a real estate salesman's card, it shall also contain the name and address of his employer; the matter to be printed on such pocket card, except as above set forth, shall be prescribed by the Administrator of the Securities Division of the office of the Secretary of State.

(e). Every real estate dealer licensed under this Act shall have and maintain a definite place of business in this State, and such place of business may be in a portion of licensee's home set aside for said purpose. The license of the real estate dealer shall at all times be prom-

inently displayed in licensee's place of business, and a duplicate of said license shall likewise be prominently displayed in all branch offices of the licensee. The said place of business shall be specified in the application for license and designated in the license.

(f). All real estate dealers shall also prominently display in their place or places of business the license of all real estate salesmen employed by them therein or in connection therewith. All licenses issued to real estate salesmen shall designate the employer of said salesmen by name.

(g). Prompt notice in writing within ten (10) days shall be given to the Administrator of the Securities Division of the office of the Secretary of State by any real estate salesman of his change of employer and of the name of the new employer into whose service such salesman is about to enter or has entered, and a new license shall thereupon be issued by the Administrator of the Securities Division of the office of the Secretary of State to such salesman for the unexpired term of the original license; provided, that such new employer shall be a duly licensed real estate dealer. The change of employer or employment by any licensed real estate salesman without notice to the Administrator of the Securities Division of the office of the Secretary of State as aforesaid shall automatically cancel the license to him theretofore issued, and it shall be the duty of the employer named in such license to deliver or mail by registered mail to the Administrator of the Securities Division of the office of the Secretary of State within five (5) days such real estate salesman's license. The real estate dealer shall at the time of mailing such real estate salesman's license to the Administrator of the Securities Division of the office of the Secretary of State, notify the salesman thereof at the address of such real estate salesman that his license has been delivered or mailed to the Administrator of the Securities Division of the office of the Secretary of State. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the Administrator of the Securities Division of the office of the Secretary of State. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this Act, either directly or indirectly under authority of said license from and after the date of receipt of said license from said dealer by the Administrator of the Securities Division of the office of the Secretary of State; provided, that another license shall not be issued to such real estate salesman until he shall return his former pocket card to the Administrator of the Securities Division of the office of the Secretary of State or shall satisfactorily account to the Administrator of the Securities Division of the office of the Secretary of State for the same; provided, further, that not more than one license shall be issued to any real estate salesman for the same period of time. The Administrator of the Securities Division of the office of the Secretary of State shall issue a new license to said salesman upon the filing of an application for a transfer and the payment of a transfer fee of One Dollar (\$1).

#### Hearing in case of refusal to license

Sec. 10. If the Administrator of the Securities Division of the office of the Secretary of State declines or fails to license an applicant, he shall immediately give notice of the fact to the applicant and upon request from such applicant filed within ten (10) days after the receipt of such notice, shall fix a time and place for hearing, of which ten (10) days notice shall be given to such applicant and to other persons interested or protesting to offer evidence relating to the real estate dealer's application. In each such case the Administrator of the Securities

Division of the office of the Secretary of State shall fix the time of such hearing on a date within thirty (30) days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time on consent of the applicant. If satisfied as aforesaid as a result of such hearing, the Administrator of the Securities Division of the office of the Secretary of State shall thereupon license the real estate dealer.

**Grounds for suspending, revoking or refusing to renew license**

Sec. 11. The Administrator of the Securities Division of the office of the Secretary of State may upon his own motion and shall upon the verified complaint in writing of any person, investigate the actions of any real estate salesman or real estate dealer or any person who shall assume to act in either such capacity within this State, and may suspend or revoke or refuse to renew any license at any time where the real estate salesman or real estate dealer in performing or attempting to perform any act as a real estate dealer or real estate salesman, or in any transaction involving the leasing or sale of an interest in real estate, is guilty of:

- (1). Knowingly making any substantial misrepresentation, or
  - (2). Making any false promises with intent to influence, persuade, or induce, or
  - (3). Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salesmen, or advertising or otherwise, or
  - (4). Acting for more than one party in a transaction without the knowledge or consent of all parties thereto, or
  - (5). Failure within a reasonable time to account for or to remit any moneys coming into his possession which belong to others, or
  - (6). Any other conduct, whether of the same or a different character than hereinabove specified, which constitutes dishonest dealings.
- The Administrator of the Securities Division of the office of the Secretary of State may also suspend or revoke or refuse to renew the license of any licensee who at any time has:
- (1). Procured a license under this Act for himself or any salesman by fraud, misrepresentation, or deceit, or
  - (2). Has been convicted of a felony, knowledge of which the Administrator of the Securities Division of the office of the Secretary of State did not have at the time of last issuing a license to such licensee, or
  - (3). Wilfully disregarded or violated any of the provisions of the law, or
  - (4). Demanded from an owner a commission to which he is not justly entitled, or
  - (5). Paid commissions or fees to, or divided commissions or fees with anyone not licensed as a real estate dealer or salesman, or
  - (6). Used any trade name or insignia of membership in any real estate organization of which he is not a member, or
  - (7). Accepted, given, or charged any undisclosed commission, rebate, or direct profit on expenditures made for a principal, or
  - (8). Solicited, sold, or offered for sale real property by offering "free lots" or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property, or
  - (9). Acted in the dual capacity of broker and undisclosed principal in any transaction, or
  - (10). Guaranteed, authorized, or permitted any person to guarantee future profits which may result from the resale of real property, or

(11). Placed a sign on any property offering it for sale or for rent without the written consent of the owner or his authorized agent, or

(12). Induced any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal, or

(13). Negotiated the sale, exchange or lease of any real property directly with an owner or lessor knowing that such owner or lessor had a written outstanding contract granting exclusive agency in connection with such property with another real estate broker, or

(14). Offered real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or any terms other than those authorized by the owner or his authorized agent, or

(15). Published advertising whether printed, radio, display, or any of any other nature which was misleading, or inaccurate in any material particular, or in any way has misrepresented any properties, terms, values, policies, or services of the business conducted, or

(16). Knowingly withheld from or inserted in any statement of account or invoice any statement that made it inaccurate in any material particular, or

(17). Published or circulated unjustified or unwarranted threats of legal proceedings which tended to or had the effect of harassing competitors or intimidating their customers.

This Section of this Act shall not be construed to relieve any person or company from civil liability or from criminal prosecution under this Act or under the laws of this State.

#### Notice and hearing

Sec. 12. The Administrator of the Securities Division of the office of the Secretary of State shall before suspending or revoking any license, notify in writing the licensee of any charges made in order to afford such licensee an opportunity to be heard, which notification shall be given at least ten (10) days prior to the date set for the hearing. The Administrator of the Securities Division of the office of the Secretary of State shall prescribe the time and place of the hearing. The Administrator of the Securities Division shall have no authority to promulgate rules or regulations which are not definitely set forth in this Act. Such written notice may be served by mailing same by registered mail to the last known business address of such licensee. If such licensee be a salesman, the Administrator of the Securities Division of the office of the Secretary of State shall also notify the real estate dealer employing him, specifying the charges made against such real estate salesman by sending a notice thereof by registered mail to the real estate dealer's last known address. At such hearing, or at any other provided for in this Act, the counsel, any and all persons complaining against him, and as well as any other witness whose testimony is relied upon to substantiate the charges made. He shall also be entitled to present evidence, oral and written, as he may see fit, and as may be pertinent to the inquiry. The said hearing may be held by the Administrator of the Securities Division of the office of the Secretary of State or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, which authorization shall be in writing and authenticated by the Seal of the State, and the said hearing shall be held, if the applicant or licensee so desires, within the county where the applicant or licensee has his principal place of business. In such hearing all witnesses shall be duly sworn by the person herein authorized to preside, and stenographic notes of the proceedings

shall be taken and filed as part of the records in the case. Any party to the proceedings desiring it shall be furnished with a copy of the stenographic notes upon the payment to the Administrator of the Securities Division of the office of the Secretary of State of a fee not to exceed Twenty-five Cents (25¢) per page.

#### **Allegation and proof of license in suit for compensation**

Sec. 13. No person or company engaged in the business of acting in the capacity of a real estate dealer or real estate salesman within this State shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in Section 2, Subdivision (a) hereof, without alleging and proving that such person or company was a duly licensed real estate dealer or salesman at the time the alleged cause of action arose.

#### **Evidence**

Sec. 14. (a). The Administrator of the Securities Division of the office of the Secretary of State, or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, which authorization shall be in writing and authenticated by the Seal of the State, may require by subpoena or summons issued by the Administrator of the Securities Division of the office of the Secretary of State or any person duly authorized to act for the Administrator of the Securities Division of the office of the Secretary of State, addressed to the sheriff or any constable, the attendance and testimony of witnesses and the production of any books, accounts, records, papers, and correspondence (except such books of account as are necessary to the continued conduct of the business, which books the Administrator of the Securities Division of the office of the Secretary of State shall have the right to examine or cause to be examined at the office of the concern and to require copies of such portion thereof as may be deemed necessary) touching such matter in question, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 18 hereof, relating to any matter which the Administrator of the Securities Division of the office of the Secretary of State has authority by this Act to consider or investigate, and for this purpose the Administrator of the Securities Division of the office of the Secretary of State, or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena or of the contumacy of any witness appearing before the Administrator of the Securities Division of the office of the Secretary of State, the Administrator of the Securities Division of the office of the Secretary of State or the person duly authorized to act for him may invoke the aid of the District Court within whose jurisdiction any witness may be found and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b). The Administrator of the Securities Division of the office of the Secretary of State, or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, may in any investigation cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed for dep-

ositions in civil actions under the laws of Texas. Each witness required to attend any hearing provided for in this Act shall receive for each day's attendance the sum of Two Dollars (\$2) and shall receive in addition the sum of Five Cents (5¢) for each mile travelled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payments of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act, as hereinbefore provided for. The fee for serving the subpoena shall be the same as that paid the sheriff for similar services. The fees, expenses, and costs incurred at or in connection with any hearing may be imposed by the Administrator of the Securities Division of the office of the Secretary of State upon any party to the record or may be divided between any and all parties to the record in such proportions as the Administrator of the Securities Division of the office of the Secretary of State may determine.

**Remedy of persons aggrieved by decision of Secretary of State**

Sec. 15. (a). Any real estate dealer, real estate salesman, owner, or subdivider aggrieved by any decision of the Secretary of State may file within thirty (30) days thereafter in the District Court of the county in which he resides, or in the District Court in the county where his principal place of business is situated, a petition against the Secretary of State officially as defendant, alleging therein in brief detail the action and decision complained of and for an order directing the Secretary of State to license the applicant or grant an owner or subdivider a permit, as the case may be. Upon service of the summons upon the Secretary of State, returnable within ten (10) days from its date, the Secretary of State shall on or before the return day file an answer. The case shall be tried in the District Court de novo, upon its merits.

(b). The District Court may, upon application of either party and upon due notice given, advance the case on the docket. From the decision of the District Court, an appeal may be taken to the Court of Civil Appeals by either party, as in other cases, and no bond shall be required by the Secretary of State. A judgment in favor of the plaintiff shall not bar after one year a new application by the plaintiff for a license, nor shall a judgment in favor of the plaintiff prevent the Secretary of State from thereafter revoking or refusing to license such person for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs.

**Fees**

Sec. 16. The Administrator of the Securities Division of the office of the Secretary of State shall charge and collect the following fees and shall duly pay all fees received into the State Treasury.

(a). A fee of Three Dollars (\$3) for the filing of any original or renewal application of a real estate dealer, which fee shall include the cost of the issuance of a license if any should be issued.

(b). A fee of Three Dollars (\$3) for the filing of any original or renewal application of a real estate dealer, which fee shall include the cost of the license, who is a member of a partnership, or association or an officer of a corporation licensed under the provisions of this Act, other than the member of the partnership, or association or the officer of the corporation named in the license issued to such partnership, association, or corporation.

(c). A fee of Three Dollars (\$3) for the filing of any original or renewal application of a real estate salesman, which fee shall include the cost of the issuance of the license if any should be issued.



(d). A fee of One Dollar (\$1) for each duplicate license where the original license is lost or destroyed and an affidavit made thereof, and where a duplicate is required for a branch office in this State.

(e). A fee of One Dollar (\$1) for each duplicate or transfer of salesman's license.

#### **Period of license; renewal**

Sec. 17. All licenses issued under the provisions of this Act shall expire on December 31st of each year at midnight, and application for the renewal thereof shall be made in such form as the Administrator of the Securities Division of the office of the Secretary of State shall prescribe. Applications for renewal of said licenses may be made between the 15th day of November and the 31st day of December.

#### **Payment of moneys into State Treasury**

Sec. 18. Upon and after the effective date of this Act, all moneys derived from fees, assessments, or charges under this Act, shall be paid by the Administrator of the Securities Division of the office of the Secretary of State into the State Treasury for safe-keeping, and shall by the State Treasurer be placed in a separate fund to be available for the use of the Administrator of the Securities Division of the office of the Secretary of State in the administration of this Act upon requisition of the Administrator of the Securities Division of the office of the Secretary of State. All such moneys so paid into the State Treasury are hereby specifically appropriated to the Administrator of the Securities Division of the office of the Secretary of State for the purposes of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Administrator of the Securities Division of the office of the Secretary of State may occupy, and necessary traveling expenses for the Administrator of the Securities Division of the office of the Secretary of State or persons authorized to act for him when performing duties hereunder at the request of the Administrator of the Securities Division of the office of the Secretary of State. At the end of the calendar year, any unused portion of said funds in said special account shall be set over and paid into the general revenue fund. The Comptroller shall upon requisition of the Administrator of the Securities Division of the office of the Secretary of State from time to time draw warrants upon the State Treasurer for the amount specified in such requisition, not exceeding however, the amount in such fund at the time of making any requisition, provided however that all moneys expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the office of Secretary of State and not otherwise.

#### **Copies of papers and documents as evidence**

Sec. 19. Copies of all papers, instruments, or documents filed in the office of the Administrator of the Securities Division of the office of the Secretary of State certified under the Seal of the State of Texas, shall be admitted to be read in evidence in all courts of law and elsewhere in this State in all cases where the original would be admitted in evidence, provided that in any proceeding in the court having jurisdiction, the court may on cause shown require the production of the originals. In any prosecution, action, suit or proceeding before any of the several courts of this State, based upon or arising out of or under the provi-

sions of this Act, a certificate under the Seal of the State duly signed by the Administrator of the Securities Division of the office of the Secretary of State showing compliance or noncompliance with the provisions of this Act respecting compliance or noncompliance with the provisions of this Act by any real estate dealer or salesman, shall constitute prima facie evidence of such compliance or noncompliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

#### **Dividing commissions with others**

Sec. 20. It shall be unlawful for any real estate dealer or real estate salesman to offer, promise, allow, give, or pay directly or indirectly any part or share of his commission or compensation arising or accruing from any real estate transaction to any person who is not a licensed dealer or salesman in consideration of service performed or to be performed by such unlicensed person, and no real estate salesman shall be employed by or accept compensation from any person other than the dealer under whom he is at the time licensed, and it shall be unlawful for any licensed real estate salesman to pay a commission to any person except through the dealer under whom he is at the time licensed.

#### **Violations of act**

Sec. 21. (a). Any person, or agent, officer, or employee of any company, acting as a real estate dealer or real estate salesman within the meaning of this Act, without first having been licensed by the Administrator of the Securities Division of the office of the Secretary of State, and every officer, agent, or employee of any company, and every other person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any land or subdivision offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning any land or subdivision contains any written statement that is false or fraudulent issues, circulates, publishes, or distributes the same, or shall cause the same to be issued, circulated, published, or distributed, or who, in any other respect, wilfully violates or fails to comply with any provisions of this Act, or who in any other respect wilfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand, or requirement of the Administrator of the Securities Division of the office of the Secretary of State under this Act as herein provided, shall upon conviction therefor be sentenced to pay a fine of not more than Five Hundred Dollars (\$500) or imprisonment in the county jail for not more than one year or both such fine and imprisonment.

(b). This Act shall not apply to the sale of any property when such sale is made by the owner, or one of the owners, or the attorney for said owner or owners.

#### **Written agreement required; no action otherwise**

Sec. 22. No action shall be brought in any court in this State for the recovery of any commission for the sale or purchase of real estate unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunder lawfully authorized. This provision shall not apply to any action for commissions pending in any court in this State at the effective date of this Act. Acts 1939, 46th Leg., p. 560.

Effective 90 days after June 21, 1939, date of adjournment of Legislature.

Section 23 of the Act of 1939, reads as follows: "If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, sentences, clauses, or phrases be declared unconstitutional."

Section 24 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing a title for the Act; providing the definition of certain words, terms, and phrases; providing certain exemptions; providing any one act prohibited herein shall be a violation hereof; providing for the administration of the Act; providing certain procedure for securing real estate dealers' and real estate salesmen's licenses and for certain information to be supplied by applicant; and requiring the recommendation of the applicant by three (3) real estate owners; providing a partnership, association, or corporation licenses under the Act can designate one of its members or officers to be licensed as a real estate dealer without additional charge and imposing certain restrictions; providing any member of partnership or officer of association or corporation not designated required to be licensed before acting as a real estate dealer and imposing certain restrictions; providing for the licensing of non-resident real estate dealers and salesmen and making certain requirements discretionary if nonresident is licensed under the laws of another State; making provision for requisition of information of applicant; requiring issuance of license if certain conditions are satisfied; and providing for issuance of temporary license under certain conditions; and providing a pocket card for each licensee; prescribing its form; and providing licensee shall maintain a definite place of business which may be his home and providing for display of dealer's and his salesman's license in dealer's place of business, and providing that the dealer may remove location of business within the county of such dealer's residence without further application; providing that duplicate licenses shall be displayed in all branch offices and providing licensee can transact business from only one office unless notice given within ten (10) days of change of location; providing procedure for dealer and salesman to follow when salesman changes employer; providing that not more than one license can be issued to a salesman for the same period; and providing for issuance of new license when salesman transfers and payment of transfer fee; providing for a hearing if applicant for a license is refused; providing for

investigation of certain dealers and salesmen; and giving Administrator of the Securities Division of the office of the Secretary of State power to revoke or refuse to renew license of any dealer or salesman guilty of certain acts; and providing that revocation of license or refusal to renew shall not relieve person or company from civil or criminal liability; providing for hearing before license suspended or revoked; authorizing certain procedure and making provision for appeal to the courts; providing no action can be maintained in courts to collect commissions for performing certain acts unless one proves he is licensed dealer or salesman; conferring on the Administrator of the Securities Division of the office of the Secretary of State, or one duly authorized, the authority to require by subpoena the attendance of witnesses, taking of depositions, and the production of books, accounts, records, papers, and correspondence relative to matters which the Administrator of the Securities Division of the office of the Secretary of State may investigate and conferring upon Administrator of the Securities Division of the office of the Secretary of State and one duly authorized the authority to issue subpoenas, administer oaths, and affirmations, examine witnesses, and receive evidence; and providing for the aid of the courts if necessary; providing for punishment for contempt; and providing for fees of witnesses, other fees, costs, and expenses; providing for the time and method of appeal to the courts by person aggrieved under this Act and proper procedure after such appeal; providing that certain fees are to be charged and collected by the Administrator of the Securities Division of the office of the Secretary of State; providing for expiration date of licenses granted; making provisions for the deposit of fees collected under terms of this Act; providing for the payment of salaries of employees and expenses of administration and for disbursement of funds collected under this Act; providing that certified copies of all instruments and documents filed in the office of the Administrator of the Securities Division of the office of the Secretary of State shall be admitted as evidence; providing that courts may require the production of original instruments and documents; and providing that in any proceedings based on the provisions of this Act, a certificate of the Administrator of the Securities Division of the office of the Secretary of State under the Seal of the State shall constitute prima facie evidence of compliance or noncompliance with the terms of this Act; making it unlawful to pay commission to one not licensed hereunder; and providing salesman cannot accept compensation from one not licensed; providing a penalty for fraudulent action by any unlicensed person or any other person; providing when law not applicable; providing that no action shall be brought in any court for recovery of any commission unless the agreement for sale be in writing or

some memorandum thereof; providing that in the event any provision of this Act is declared void or unconstitutional that remain- ing provisions shall remain in full force and effect; and declaring an emergency. Acts 1939, 46th Leg., p. 560.

## TITLE 115—REGISTRATION

### CHAPTER THREE—EFFECT OF RECORDING

Art.

6625a. Recording foreign deeds, etc. [New].

Art. 6625a. Recording foreign deeds, etc.

Copies of all deeds, transfers, or any other written evidence of title to land which have been filed without the State of Texas or without the county in which such lands are located, and which were executed and recorded in conformity with the laws governing such recording, when duly certified by the officials having lawful custody thereof, shall be admitted to record in the county where such land lies. Added Acts 1939, 46th Leg., p. 578, § 1.

Effective May 11, 1939.

Section 2 of the Act of 1939 declared an

emergency and provided that the Act should take effect from and after its passage.

## TITLE 116—ROADS, BRIDGES, AND FERRIES

## CHAPTER ONE—STATE HIGHWAYS

1. STATE HIGHWAY DEPARTMENT	Art.	
Art.		of interest and sinking funds
6673—b. Contracts with cities, etc., concerning State highways [New].		[New].
	6674q—13.	Expenditure of Federal funds on roads not part of state highway system [New].
1A. CONSTRUCTION AND MAINTENANCE		
6674d—1. Federal aid on non-State Highway System roads [New].	6674q—14.	Bonds of counties of 19,000 to 19,500 population to participate in State Highway Funds [New].
6674q—8a. Bonds of navigation districts; preference over other bonds by Board of County and Road District Bond Indebtedness unauthorized [New].	6674r.	Bonds of certain counties and road districts entitled to participate in State Highway Fund under certain conditions [New].
6674q—11a. Effect of act [New].	6674s.	Workmen's Compensation Insurance for Highway Department Employees [New].
6674q—12. State Treasurer as ex officio county treasurer in payment		

## Art. 6673—b. Contracts with cities, etc., concerning State highways

The State Highway Commission is hereby authorized and empowered, in its discretion, to enter into contracts or agreements with the governing bodies of incorporated cities, towns, and villages, whether incorporated under the home rule provisions of the Constitution, Special Charter, or under the General Laws, providing for the location, relocation, construction, reconstruction, maintenance, control, supervision, and regulation of designated State highways within or through the corporate limits of such incorporated cities, towns, and villages, and determining and fixing the respective liabilities or responsibilities of the parties resulting therefrom; and such incorporated cities, towns, and villages are hereby authorized and empowered, through the governing bodies of such cities, towns, and villages to enter into such contracts or agreements with the State Highway Commission. Added Acts 1939, 46th Leg., p. 581, § 1.

Effective May 15, 1939.

Section 2 of the Act of 1939 read as follows: "The provisions of this Act shall be cumulative of all laws on this subject, and wherever the provisions of this Act are in conflict with any existing law or laws on

this subject, the provisions hereof, in so far as same are in conflict with any existing laws or law, shall govern and control."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## [1A. CONSTRUCTION AND MAINTENANCE]

[Art. 6674c. Repealed by Acts 1932, 42nd Leg., 3rd C. S., p. 15, ch. 13, § 3]

See Art. 6674q-3.

## Art. 6674d—1. Federal aid on non-State Highway System roads

From and after the effective date of this Act, all moneys appropriated by the Congress of the United States and allocated by the Secretary of Agriculture of the United States to the State Highway Department for expenditure on roads not on the system of State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads

and said Federal Funds may be matched, or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways, the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs on which the application of Federal funds is prohibited or impractical. Acts 1939, 46th Leg., p. 579, § 1.

Effective May 10, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws. Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

This Act contained the following preamble:

"WHEREAS, The Federal Government appropriates certain funds for the improvement of secondary or feeder roads and for the elimination of hazards to life at rail-road grade crossings; and

"WHEREAS, It is necessary, in order to obtain certain of these funds, that the State furnish an equal amount of State funds, as required by the Federal Highway Act of 1921, as amended and supplemented; and

"WHEREAS, The State Highway Commission is authorized to accept said Federal funds but is not permitted to expend State or Federal funds on roads which are not on the system of State highways; and

"WHEREAS, Said Federal funds are a direct grant and are greatly needed for im-

provement of such roads and for relief of the unemployed in this State, and the State Highway Commission is desirous of utilizing said Federal funds to the fullest extent for the improvement of said roads; now, therefore,"

Title of Act:

An Act to authorize the State Highway Department, in conjunction with the Bureau of Public Roads, to expend, from and after the effective date of this Act, upon roads not a part of the system of State highways, funds appropriated by the Congress of the United States and allocated by the Secretary of Agriculture of the United States to the State Highway Department for expenditure on such roads; to permit such funds to be matched or supplemented from the State Highway Fund; expressly repealing all laws or parts of laws in conflict herewith to the extent of such conflict, but said laws are not otherwise repealed; and declaring an emergency. Acts 1939, 46th Leg., p. 579.

[Art. 6674q—1. State assumption of county and road district highway bonds]

It is expressly recognized and declared that all highways now or heretofore constituting a part of the System of State Highways and that all roads not constituting a part of such System, which have been constructed in whole or in part from the proceeds of bonds, warrants or other evidence of indebtedness issued by counties of the State of Texas, or by defined road districts of the State of Texas, under the laws authorizing the same, have been and are and will continue to be beneficial to the State of Texas at large, and have contributed to the general welfare, settlement and development of the entire State, and that, by reason of the foregoing, a heavy and undue burden was placed, and still rests, upon the counties and defined road districts and their inhabitants, and both a legal and moral obligation rests upon the State to compensate and reimburse such counties and defined road districts which, as aforesaid, have performed functions resting upon the State, and have paid expenses which were and are properly State expenses, all for the use and benefit of the State, and to the extent provided herein that the State provide funds for the further construction of roads not designated as a part of the State Highway System.

Having heretofore, by an Act of the Legislature (Chapter 13, Acts of the Third Called Session of the Forty-second Legislature in 1932) taken over, acquired and purchased the interest and equities of the various counties and defined road districts in and to the highways constituting a part of the System of then designated State Highways, it is further declared to be the policy of the State to take over, acquire, purchase and retain, the interest and equities of the various counties and

defined road districts in and to the highways, not previously taken over, acquired and purchased and constituting on January 2, 1939, a part of the System of designated State Highways, and to acquire and purchase the interest and equities of the various counties and defined road districts in and to the roads not constituting a part of the System of the designated State Highways as of January 2, 1939, and under the provisions of this Act to acquire such interest and equities in such roads hereafter to be constructed with money furnished by the State, and to reimburse said counties and districts therefor, and to provide for the acquisition, establishment, construction, extension and development of the System of designated State Highways of Texas, from some source of income other than the revenues derived from ad valorem taxes, it being expressly provided herein that the State is not assuming, and has not assumed, any obligation for the construction, extension and development of any of the highways thus acquired and purchased which do not constitute a part of the System of designated State Highways. And it is hereby determined that the further provisions of this Act constitute fair, just and equitable compensation, repayment and reimbursement to said counties and defined districts and for their aid and assistance to the State in the construction of State Highways and for the construction of said roads which are ancillary to but do not constitute a part of said System of State Highways, and fully discharges the legally implied obligations of the State to compensate, repay and reimburse the agencies of the State for expenses incurred at the instance and solicitation of the State, as well as for expenses incurred for the benefit of the State, and fully discharges the State's legally implied obligation to such counties and defined road districts to provide additional funds for the further construction of roads not designated as a part of the State Highway System. As amended Acts 1939, 46th Leg., p. 582, § 1.

Articles 6674q—1 to 6674q—11a effective July 7, 1939.

Section 12 of the Acts of 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, as added by Acts 1939, 46th Leg., p. 582, § 1, made an appropriation for additional employees and

expenses to the Board of County and District Road Indebtedness.

Section 2 of amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 6674q—2. Definitions

By the expression "defined road districts" or "road districts" or "district," used in this Act, is meant any defined road district of the State or any Justice or Commissioner's Precinct acting as a road district or any road district located in one or more than one county.

By the expression "roads" or "road" as used in this Act, is meant roads, roadbeds, bridges and culverts.

By the expression "highways," "State Highways" and "State designated Highways" are meant roads which prior to January 2, 1939, had become a part of the System of designated State Highways, including roads still constituting a part of such system on said date and those which theretofore constituted a part of such system, but whose status had been lost through change, relocation or abandonment, and including roads concerning which the State Highway Commission had prior to January 2, 1939, indicated its intention to designate, evidencing such intention in the official records or files.

All roads which prior to January 2, 1939, had not become a part of the System of State designated Highways, for convenience in this Act, are called "Lateral Roads."

The term "Board" as used in this Act, when the contrary is not clearly indicated, shall mean the "Board of County and District Road Indebtedness."

The term "fund" as used in this Act, when the contrary is not clearly indicated, shall mean the "County and District Highway Fund."

The expression "eligible obligations" as used in this Act shall mean obligations, the proceeds of which were actually expended on State designated Highways. As amended Acts 1939, 46th Leg., p. 582, § 1.

Art. 6674q—3. Omitted. Acts 1939, 46th Leg., p. 582, § 1

Acts 1939, 46th Leg., p. 582, § 1, generally amending Acts 1932, included a new section 3. See art. 6674q—4.

[Art. 6674q—4. Improvements under control of State Highway Department]

All further improvement of said State Highway System shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. Surveys, plans and specifications and estimates for all further construction and improvement of said System shall be made, prepared and paid for by the State Highway Department. No further improvement of said System shall be made with the aid of or with any monies furnished by the counties except the acquisition of rights of way which may be furnished by the counties, their subdivisions or defined road districts. But this shall in nowise affect the carrying out of any binding contracts now existing between the State Highway Department and the Commissioners Court of any county, for such county, or for any defined road district. In the development of the System of State Highways and the maintenance thereof, the State Highway Commission shall, from funds available to the State Highway Department, provide:

(a). For the efficient maintenance of all highways comprising the State System.

(b). For the construction, in cooperation with the Federal Government to the extent of Federal Aid to the State, of highways of durable type of the greatest public necessity.

(c). For the construction of highways, perfecting and extending a correlated system of State Highways, independently from State Funds. As amended Acts 1939, 46th Leg., p. 582, § 1.

[Art. 6674q—5. Appropriations from State Highway Fund]

All monies now or hereafter deposited in the State Treasury to the credit of the "State Highway Fund," including all Federal Aid money deposited to the credit of said Fund under the terms of the Federal Aid Highway Act, shall be subject to appropriation by the Legislature for the specific purpose of the improvement of said System of State Highways by the State Highway Department. As amended Acts 1939, 46th Leg., p. 582, § 1.

[Art. 6674q—6. Allocation of funds from gasoline tax]

Each month the Comptroller of Public Accounts, after computing and ascertaining the maximum amount of refunds that may be due by the State on the business of selling gasoline, as provided in Section 17, Chapter 88, General Laws, Acts of the Second Called Session of the Forty-first Legislature, as amended by Chapter 104, General Laws, Acts of the Regular Session of the Forty-second Legislature,<sup>1</sup> shall deduct same from the total occupation or excise tax paid on the business of selling gasoline, as imposed by Section 17, Chapter 98, General Laws, Acts of the Regular Session of the Forty-second Legislature, as amended;<sup>2</sup> and, beginning



with said taxes collected on and after October 1, 1932, shall, after deducting the said maximum amount of refunds, allocate and place the remainder of said occupation or excise tax on the business of selling gasoline, in the State Treasury as provided by law, in the proportion as follows: One-fourth of such occupation or excise tax shall go to, and be placed to the credit of, the Available Free School Fund; one-fourth of the same shall go to, and be placed to the credit of, a fund to be known as the "County and Road District Highway Fund," subject to the provisions and limitations of Section 3 of this Act; <sup>3</sup> the remainder of such occupation or excise tax shall go to, and be placed to the credit of, the State Highway Fund, for the construction and maintenance of the public roads of the State, constituting and comprising the system of State Highways of Texas, as designated by the State Highway Commission of Texas. As amended Acts 1939, 46th Leg., p. 582, § 1.

<sup>1</sup> Article 7065n, subs. 3, 5.

<sup>3</sup> Article 6674q—4.

<sup>2</sup> Articles 7065a, 7065e, 7065f, 7065h, 7065j,  
Pen.Code, art. 141c.

[Art. 6674q—7. Administrative provisions]

(a). All bonds, warrants or other evidences of indebtedness heretofore issued by counties or defined road districts of this State, which mature on or after January 1, 1933, in so far as amounts of same were issued for and the proceeds have been actually expended in the construction of roads, that constituted and comprised a part of the System of designated State Highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways or any road that heretofore has constituted a part of said System and which has been or may be changed, relocated or abandoned, whether said indebtedness is now evidenced by the obligation originally issued or by refunding obligations or both, shall be eligible to participate in the distribution of the monies coming into said County and District Highway Fund, subject to the provisions of this Act; provided, that such indebtedness, the proceeds of which have been expended in the construction of roads, which have been designated as a part of the State Highway System after September 17, 1932, and prior to January 2, 1939, shall participate in said County and Road District Highway Fund as of the date of the designation of said road as a part of the State System; provided further that any participation in said fund by any county or defined road district shall be less the amount of money which it was required to accumulate in the sinking fund under the provisions of the statutes and order of the Commissioners Court authorizing the issue of said eligible obligations, and the tax levy authorized at the time of issuance thereof for the time such obligations have run or may have run regardless of whether the full amount of said funds are, or may be, actually on hand and to the credit of the sinking funds of such county or defined road district. It is provided expressly in this connection that the term "sinking funds" shall include only those funds required under the law for the retirement of principal and shall not include any excess or surplus which may have been accumulated by any county or defined road district above the legal requirements. The amount of such eligible indebtedness shall be determined as hereinafter provided. Provided further that no State funds created or provided for by the terms of this Act shall be expended in the payment of any interest maturing on the amount of sinking funds required by the terms of this Act to be accumulated by the county or defined road district at the date of eligibility of its obligations.

In the event the State Highway Commission has, on a date prior to January 2, 1939, indicated its intention of designating as State Highways the public roads of any county or defined road district in this State, and has evidenced such intention in its official records or files, then the provisions of this Act shall apply as if the said roads had actually been designated prior to January 2, 1939.

In addition to and regardless of the other provisions of this Act, all bonds voted by a county prior to January 2, 1939, in so far as amounts of same were or may be issued and the proceeds actually expended in the construction of roads which are a part of the designated System of State Highways, shall be eligible to participate in the distribution of the monies coming into said county and Road District Highway Fund the same as provided for other bonds under this Act and as of the date of the designation of said road as a part of the State System; and where such bonds were voted prior to the designation of the road as a State Highway, the county may issue and spend the proceeds on the construction of such road under contract and specifications to be approved by the State Highway Department, and when so expended the bonds shall be eligible to participate in the county and Road District Highway Fund the same as if the bonds were issued and expended prior to January 2, 1939.

(b) The Board of County and District Road Indebtedness, created by Chapter 13, Acts of the Third Called Session of the Forty-second Legislature, consisting of the State Highway Engineer, State Comptroller of Public Accounts, and State Treasurer, is hereby continued and charged with the duties of administering this Act. The State Comptroller of Public Accounts shall be the Secretary of said Board and said Board shall elect its own chairman from its membership. The Board shall adopt its own rules consistent with this Act for the proceedings held hereunder, and shall have authority to call to its assistance in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund, any official or employee of this State, and shall avail itself of all data and information assembled in the administration of Chapter 13, Acts of the Third Called Session of the Forty-second Legislature, and said Board is hereby authorized to call on any County Judge or any County or State official or employee, and shall have full access to all the records, books and public documents for the purpose of obtaining any information which it may deem necessary and pertinent to its inquiry in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund.

(c) It shall be the duty of the Board of County and District Road Indebtedness, from the data and information furnished by the County Judges of the State, and by the Chairman of the State Highway Commission and by the State Comptroller of Public Accounts, and from such further investigation as said Board may deem necessary to ascertain and determine the amount of indebtedness eligible under the provisions of this Section of this Act to participate in the monies coming into said County and Road District Highway Fund. Whenever in the case of any particular issue of obligations the proceeds thereof shall have been expended partly on designated State Highways, or highways heretofore constituting designated State Highways, and partly on roads which never have been designated State Highways, said Board shall ascertain and determine the amount of said obligations, the proceeds of which were actually expended on State Highways or on roads heretofore constituting State Highways, and said obligations to said amount and extent shall be eligible for participation in the monies coming into the County and Road

District Highway Fund, and said ascertainment and determination shall be certified to the County Judge by said Board and all of the unmatured outstanding obligations of said issue shall ratably have the benefit of said participation in said monies. The ascertainment and determination by the Board of County and District Road Indebtedness, after reasonable notice and hearing, of the amount of any county or defined road district obligations eligible under the provisions of this Act to participate in any monies coming into the County and Road District Highway Fund, or as to the amount of any obligations, the proceeds of which were actually expended on State Highways, or on roads heretofore constituting State Highways, shall be final and conclusive and shall not be subject to review in any other tribunal. But said Board of County and District Road Indebtedness shall have the right at any time to correct any errors or mistakes it may have made.

(d). The Board shall make and keep a record of all county and defined road district eligible obligations, issue by issue, and a book shall be prepared and kept in which shall be recorded all eligible issues, maturity dates of principal and interest, rates of interest, and places of payment for each county and each defined road district; each issue and the data pertaining to same shall be listed separately. The Board shall keep a record of all vouchers issued.

(e). The State Treasurer shall keep a separate account for each county and defined road district of any monies received for the credit of said county or defined road district pursuant to the provisions hereof.

(f). A list shall be compiled by the Board of County and District Road Indebtedness showing the amount ascertained and determined by it to be the eligible indebtedness of each county and defined road district, and a copy thereof shall be furnished to each County Judge in this State.

(g). From year to year, and not later than July 15th of each year, said Board shall ascertain and determine the sum necessary to pay the interest, principal, and sinking fund requirements on all eligible obligations for the next succeeding calendar year and shall estimate the sum which shall be applicable to the same, and shall, not later than August 1st of each year, give notice to the County Judge of each county of the estimated amount available for application to said interest, principal, and sinking fund requirements. In the event the amount so estimated to be applied to the payment of eligible obligations for any county or defined road district is sufficient to meet all maturing interest, principal, and sinking fund requirements, the Commissioners Court may dispense with the collection of ad valorem levies for such calendar and/or fiscal year for such interest, principal, or sinking fund requirements. In the event the amount of payments so estimated to be applied is not sufficient to meet the maturing interest, principal, and sinking fund requirements, the County Commissioners Court shall collect from taxes on the property in said respective counties and defined road districts, an amount of money equal to the difference between the amount of such requirements and the amount available for application. In this connection it is declared to be the intent of the Legislature that all contractual duties and obligations which may exist between any county and/or defined road district and the owner or holder of the present outstanding indebtedness of any county and/or defined road district, shall not be in any manner disturbed or impaired and shall remain inviolate. Any tax heretofore provided to be levied in support of any present outstanding indebtedness affected by the provisions of this Act shall continue to be assessed, levied, and collected as originally provided; however, the collection of said tax may, by order of the Commissioners Court, be lessened and reduced by the

payments made, and to be made, thereon and in behalf of such indebtedness out of the County and Road District Highway Fund, as herein provided, and as succeeding Legislatures shall, by appropriation, make provisions therefor. The entire proceeds of all taxes collected on any eligible issue of bonds shall be remitted by the County Treasurer of each county collecting the same, together with a statement of the amount collected, to the State Treasurer and shall be held by the State Treasurer as ex-officio Treasurer of said county or defined road district for the benefit of the county or defined road district remitting the same, and be disbursed to meet the interest, principal, and sinking fund requirements on the eligible obligations of said county or defined road district. In the event the amount of funds available to be applied to meet the maturing interest, principal, and sinking fund requirements in any calendar or fiscal year is not sufficient to satisfy such requirements, the monies available in the County and Road District Highway Fund, as estimated and determined by the Board, shall be, for that calendar or fiscal year first applied to the payment and satisfaction of interest maturing on all eligible obligations during the particular calendar and/or fiscal year, and this payment is to be made ratably upon the interest on eligible obligations of the various counties or defined road districts; and if there is more of said monies available than necessary to pay all of said interest, then such balance over the required interest payment for such year shall be distributed ratably to each issue of eligible obligations on the basis of the principal of eligible obligations and sinking fund requirements thereon maturing each year.

(h) On September 1st of each year after the Board has paid off and discharged all eligible obligations maturing during the preceding fiscal year, together with the interest on such obligations and the sinking fund requirements accruing thereon, out of the County and District Highway Fund, any surplus remaining in said Fund over and above Three Million Dollars (\$3,000,000) which shall be carried forward as working capital or as a revolving fund shall be set aside and credited to an account which shall be known as "Lateral Road Account," provided, however, all money on deposit with the State Treasurer in the County and Road District Highway Fund at the close of the day of August 31, 1939, shall be held, used and applied exclusive to the payment of principal, interest and sinking fund requirements on indebtedness constituting eligible obligations under Chapter 13, Acts, Third Called Session of the Forty-second Legislature and amendments thereto in effect at the time this Act becomes effective.

As soon as practicable after the passage of this Act and before the Lateral Road Account is allocated to the counties, the Board shall determine the amount each county and each defined road district has paid since January 1, 1933, under the provisions of Chapter 13, Acts of the Third Called Session of the Forty-second Legislature, as amended, toward its debt service upon bonds which at the time of payment were eligible to participate in the County and Road District Highway Fund, and shall deduct from the amount paid by such county or defined road district any and all advancements made by the Board to such county or defined road district in adjusting, refunding or prepaying the eligible obligations of such county or defined road district, and after making such deductions, the Board shall credit the Lateral Road Account of each county or defined road district with the net balance contributed by such county or road district toward the retirement of said eligible obligations and said funds so credited to any county or defined road district may be used or

expended by the counties and defined road district for the purposes authorized in this section.

Not later than September 15th of each year the said Board shall ascertain the exact amount of money which has been allocated to the said Lateral Road Account for such fiscal year and which at that time is available. The Board shall allocate to each county its proportionate part of the monies in said Lateral Road Account, which allocation shall be determined in the following manner:

(1). One-tenth of the money in said Account shall be allocated upon the basis of area, determined by the ratio of the area of the county to the total area of the State.

(2). Two-tenths of the monies in said Account shall be allocated on the basis of population according to the last preceding Federal Census, determined by the ratio of the population of the county to the total population of the State.

(3). Three-tenths of the monies in said Account shall be allocated upon the basis of the number of motor vehicles registered during the last preceding registration year, determined by the ratio of the number of such vehicles registered in the county to the total number registered in the State as shown by the official report of the State Highway Department.

(4). Four-tenths of the monies in said Account shall be allocated to the counties on the basis of lateral road mileage, determined by the ratio of the mileage of the lateral roads in the county to the total mileage of lateral roads in the State as of January 1, 1939, as shown by the records of the State-Federal Highway Planning Survey and the State Highway Department.

If the records of the Highway Department and the State-Federal Highway Planning Survey are such that, in the opinion of the Highway Commission or of any county, there is a reasonable doubt as to their accuracy, the Highway Commission may authorize an independent survey to be made of that county's lateral road mileage upon its own motion or on the application of said county. The expense of such survey shall be borne by the county.

The monies allocated to each county from the Lateral Road Account shall be used by said county first for paying the principal, interest and sinking fund requirements maturing during the fiscal year for which such money was allocated to such county on bonds, warrants and other legal obligations issued prior to January 2, 1939, the proceeds of which were actually expended in acquiring rights of way for State designated highways, it being the intention of the Legislature to designate and set apart sufficient money to pay off and discharge said outstanding obligations incurred for right of way acquisition. Funds remaining in the Lateral Road Fund of any county after the payment of said right of way obligations may be used by the county, under the direction of the Commissioners Court, for any one or all of the following purposes: (a) for the acquisition of rights of way for county lateral roads and for the payment of legal obligations incurred therefor prior to January 2, 1939; (b) for the construction or improvement of county lateral roads, (c) for paying the principal, interest and sinking fund requirements of any bonds or warrants which were legally issued by such county or Road District prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads, (d) for the purpose of supplementing funds appropriated by the United States Government for Works Progress Administration highway construction, Public Works Administration highway construction, and such other grants of Federal

funds as may be made available to the counties of this State for county lateral road construction, and (e) for the purpose of cooperating with the State Highway Department and the Federal Government in the construction of farm-to-market roads.

After such allocation has been made to the several counties in the State, the Board shall in writing notify the Chairman of the Commissioners Court of each county of the amount which has been credited to that county. After receiving said notice, the Commissioners Court shall, within sixty days, notify the Board of the manner in which it has exercised its option as to the one or more specified uses of said money permitted under this Act.

In the event the Commissioners Court of a county shall have elected to use all or any part of the money thus allocated to said county for the purpose of paying principal and interest or sinking fund requirements of its indebtedness for lateral roads, such money shall be applied pro rata to the payment of the debt service requirements of all issues of lateral road indebtedness of the county and all included defined road districts, in the proportion that the debt service requirements of each issue bears to the aggregate debt service requirements of all issues for that year. When any issue of obligations which will receive aid under this section is already listed with the Board of County and District Road Indebtedness, the Board shall credit the amount applicable to said issue to the account of said issue in the State Treasury. As to all other issues of obligations, which will receive aid under this subsection (h), the Commissioners Courts of the specific counties affected shall have the right if so desired to utilize the facilities of the State Board of County and District Road Indebtedness in paying the amounts of principal and interest on said issues substantially in the manner that payments are effected as to such eligible obligations.

In the event the Commissioners Court of a county elects to use the money allocated to it from the Lateral Road Account for the construction of lateral roads, it shall notify, in writing, the said Board of its election to make such use of said money. Whereupon, said Board shall remit said money, or the part thereof to be utilized for such purpose, to the County Treasurer of such county, said money to be deposited by the County Treasurer in accordance with the law, and the same shall be utilized by the county, acting through the Commissioners Court, for the construction of lateral roads. Each county may call upon the State Highway Commission to furnish adequate technical and engineering supervision in making surveys, preparing plans and specifications, preparing project proposals and supervising actual construction; the actual cost of such aid in supervision shall be paid by the county as a charge against its project.

In order that maximum benefits may be obtained in the expenditure of the State fund made available to the counties under this Act for the construction of county lateral roads, and so that the counties may have the benefit of widespread competition among contractors in bidding on such projects, such counties may, in their discretion, authorize the State Highway Commission to receive bids in Austin on all such construction in the same manner as is now provided by law for the award of contracts on State Highways.

When any road which shall have been constructed by any county wholly from the County Lateral Road Account shall be designated by the State Highway Commission as a part of the system of designated State Highways, the designation of such road by the State Highway Commission shall constitute a full and complete discharge of any and all obli-

gations of the State, moral, legal or implied, for the payment of such highway.

In the event the Commissioners Court elects to cooperate with the Highway Department in the building of, or in the construction of, farm-to-market roads, it shall by proper resolution entered upon its minutes, authorize the State Treasurer to pay such funds to be so used over to the State Highway Department for use on certain designated projects. Regardless of how the funds allocated to the counties from the Lateral Road Account are used, the County Judge of each county shall file with the Board on or before October 1st, of each year, a verified report showing the manner in which the said funds have been expended, the nature and location of the roads constructed, and such other information as the Board may from time to time require.

(i). The County Commissioners Court of any county may exercise the authority now conferred by law to issue refunding obligations for the purpose of refunding any eligible debt of the county or of any defined road district; and such refunding obligations, when validly issued, shall be eligible obligations within the meaning of this Act, if said Board of County and District Road Indebtedness shall approve the maturities of said refunding obligations and the rate of interest borne by them. In any instance where, in the opinion of said Board, the existing maturities of any issue of eligible obligations or any part thereof are such as to give the county or defined road district which issued them an inequitable or disproportionate participation in the monies coming into the County and Road District Highway Fund in any particular period, said Board, in its discretion, may require said issue or any part thereof to be refunded into refunding obligations bearing such rate of interest and having such maturities as may be satisfactory to the Board. And if said county or defined road district shall fail or refuse to effectuate such refunding within a reasonable time to be fixed by said Board, said obligations so required to be refunded, and all other obligations of said county or defined road district shall cease to be eligible for participation in said County and Road District Highway Fund until the requirements of said Board with respect to refunding shall be complied with.

The Board of County and District Road Indebtedness is hereby made the refunding agent of each county and as such agent is directed to cooperate with the Commissioners Court of each county in effecting the necessary refunding of each issue of bonds; the Board shall prepare the necessary refunding orders for the Commissioners Court, prepare the proceedings and act in an advisory and supervisory capacity to the end that the expense of refunding any issue of bonds may be reduced to the minimum. Provided that no commission, bonus, or premium shall be paid by any county or defined road district for the refunding of such obligations, and no County Treasurer shall receive any commission for handling of the funds derived from the refunding of such obligations. All actual expense incurred in the refunding of its eligible indebtedness, including cost of proceedings, printing, legal approval and interest adjustment, shall be chargeable against the money theretofore or thereafter collected from ad valorem taxes, or at the option of the Commissioners Court conducting such refunding, may be paid from any other money under its control and available for the purpose, provided no obligations for such expense items shall be incurred or paid without affirmative approval by said Board.

(j). All monies to be deposited to the credit of the County and Road District Highway Fund, from September 1, 1939, to August 31, 1941, both inclusive, are hereby appropriated to said respective counties and defined road districts and shall be received, held, used and applied by the State

Treasurer, as ex officio Treasurer of said respective counties and defined road districts, for the purposes and uses more specifically set forth in this Act, including the payment of principal, interest and sinking fund requirements on all eligible obligations maturing on and from September 1, 1939, to and including August 31, 1941, and each year thereafter until all of such eligible obligations are fully paid; and monies coming into the credit of the County and Road District Highway Fund with the State Treasurer and all monies remaining therein from the previous year shall be received and held by him as ex officio treasurer of such counties and defined road districts, and shall first be subject to the appropriation for the payment of interest, principal and sinking funds maturing from time to time on said eligible obligations and then for the other uses specified and permitted in this Act.

(k). As payment of principal and/or interest becomes due upon such eligible obligations, the State Comptroller of Public Accounts shall issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin, Texas, or by remitting to the bank or trust company or other place of payment designated in the particular obligation. Such warrants or voucher claims shall show on their face that the proceeds of the same are to be applied by the paying agent to the payment of certain specified obligations or interest therein described, by giving the name of the county or defined road district by which they were issued, numbers, amounts and dates of maturities of the obligations and interest to be paid with instructions to the State Treasurer, paying agent, bank or trust company to return to the State Comptroller of Public Accounts such obligations and interest coupons when same are paid, and the State Comptroller of Public Accounts shall, upon receipt of said obligations and coupons, credit same on his records and send them, duly cancelled, to the Commissioners Court of the appropriate county, which shall cause to be duly entered a record of such cancellation. In instances wherein counties or defined road districts therein shall have arranged with the Board to pay principal or interest thereon, of outstanding lateral road indebtedness, the Board, the State Comptroller of Public Accounts and the State Treasurer shall follow, in so far as practicable, the procedure prescribed in this subsection (k) for the payment of the principal and interest of eligible obligations.

(l). Expenses necessary to be incurred in the determination of the indebtedness of the counties and defined road districts of the State, and in the discharge of the duties required for the payment of such obligations shall be paid from the County and Road District Highway Fund by warrant approved by the Chief Accountant, the State Comptroller of Public Accounts and one other member of said Board. The compensation of all employees of said Board shall be fixed by the Legislature. All employees of said Board of County and District Road Indebtedness shall be bonded, the amount of such bond being set by the Board.

(m). All of the securities now on hand in which sinking funds collected for the benefit of outstanding eligible issues are invested, and all funds and securities hereafter acquired for the benefit of the entire outstanding balance of all eligible bond issues, shall be forwarded within thirty (30) days from the effective date of this Act, and thereafter within thirty (30) days of the acquisition of such fund or securities, to the State Treasurer as ex officio County Treasurer of the various counties and defined road districts. Provided that the cash now on hand in the sinking fund created for the benefit of outstanding eligible obligations may also be remitted, as above set forth, at the option of such county or defined road district. Any county, the Commissioners Court of which



fails or refuses to comply with the provisions of this Act in all things, including the levy, assessment, and collection of a tax and at a rate sufficient to pay all sums due or to become due, which the State is unable to pay or to provide each year the proportionate amount of sinking fund required to redeem its outstanding bonds at their maturity shall not participate in any of the benefits of this Act so long as such county fails or refuses to comply with the provisions thereof. The Board of County and District Road Indebtedness shall have and possess full authority to invest all such sinking funds, including all future sinking funds acquired in any manner whatsoever, in any eligible obligations of the various political subdivisions of this State, which mature within the current biennium in which such securities are purchased, and where there is on hand a sufficient amount of monies or securities to the credit of any one political subdivision to retire some of its outstanding obligations, whether then due or not, the Board of County and District Road Indebtedness may, if it deems it advisable, purchase and cancel said obligations of such particular political subdivision, irrespective of maturity dates. Provided further, that any county which has selected a depository according to law and in which county such depository has qualified by giving surety bonds or by the deposit of adequate securities of the kind provided by law, which in the opinion of the Board of County and District Road Indebtedness is ample to cover the county deposits, and which county has not defaulted in the payment of any instalment of principal and/or interest on any county bonds for a period of five (5) years next preceding the date of the filing of its application for exemption, and in which county all sinking funds of all bond issues are in excess of the standard required by law and which county has levied for the current tax year adequate rates in support of outstanding bond issues and warrants as required by the Constitution and Statutes of said State, shall be exempt from the provisions of this subsection (m) of this Act, and which exemption shall be obtained by such county in the manner and under conditions prescribed by the said Board of County and District Road Indebtedness. Said Board shall have the right to inspect the records of such county at any subsequent date to ascertain whether or not the facts warrant the continuation of the exemption. If at any time, in the opinion of the Board, counties that have been granted exemption under the provisions of this Act shall cease to comply with all the conditions under which the exemption has been granted, the Board shall notify the county to return all securities in which the sinking funds of eligible road bond issues are invested and the residue in said sinking funds, and to begin immediately forwarding taxes levied and collected for the payment of interest and principal on all eligible road bond issues. Said counties whose exemption has been cancelled by said Board shall be given a period of thirty (30) days in which to comply with the demands of the Board. Provided further, that such county so exempt shall furnish the Board an annual statement of the condition of the sinking funds of the several eligible road bond issues, together with a financial statement of the county depository. The Board shall have the right to withhold the payment of any maturity on any eligible road bond indebtedness where such county has failed or refused to comply with all the provisions of this Act.

(n). The Board shall keep adequate minutes of its proceedings and semiannually, within thirty (30) days after February 28 and August 31, of each year, shall make itemized reports to each county with respect to the receipt, disbursement and investment of the funds credited to such county. The Commissioners Court of any county, and/or its accredited representatives, shall have the right to inspect the records of said Board

and of the State Treasurer, at any reasonable time for the purpose of making any investigation or audit of the accounts affecting its county.

(o). The Board shall, within ninety (90) days after the close of each fiscal year, make a complete accounting for the preceding year to the Governor of this State, showing in such report its acts, investments, changes in investments and sinking fund status of each county and each defined road district, and shall file copies of such report with the President of the Senate and with the Speaker of the House of Representatives.

(p). In the event this Act is repealed, or shall be or become inoperative as to any county or defined road district, then it shall be the duty of the Board to ascertain immediately the amount of monies and securities remaining on hand with it or with the State Treasurer belonging to the several counties or defined road districts affected, and forthwith to return the same to the County Treasurer of the County entitled thereto, accompanied by an itemized statement of the account of the county or defined road district.

(q). All funds on hand belonging to, and hereafter credited to, the several counties and defined road districts of the State, shall be considered State funds, and as such shall be deposited at intervals in the depositories provided for by the State laws, and all interest earned on such funds and on the securities in which the sinking funds are invested shall belong to said counties or defined road districts, and shall be credited to them by the State Treasurer as earned and collected.

(r). Upon notice from the Board of the amount that such county or defined road district shall be required to pay toward any instalment of interest or maturing principal, the County Treasurer of such county shall, not later than twenty (20) days prior to the maturity date of such interest, principal, or sinking fund requirements, forward to the State Treasurer the amount fixed by the Board as being necessary to supplement the amounts previously placed to the credit of any such county or defined road district by said Board under the provisions of this Act. As amended Acts 1937, 45th Leg., p. 761, ch. 370, § 1; Acts 1937, 45th Leg., p. 1344, ch. 500, § 1; Acts 1939, 46th Leg., p. 582, § 1.

<sup>1</sup> Articles 6674q—1 to 6674q—11.

Amendment of 1937 effective May 20, 1937.

The title of the Act of 1937, cited to the text, refers to this section as having been amended by chapter 117, Acts of First Called Session of the Forty-third Legislature. However, such ch. 117 amended ch. 13 of the Act of 1932, cited to the text, by adding section 7a (art. 6674q—7A) but did not amend this section alone.

Section 2 of the amendatory Act of 1937 reads as follows: "If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner af-

fect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect."

Section 3 reads as follows: "Chapter 117, Acts, First Called Session of the Forty-third Legislature is hereby specifically repealed [art. 6674q—7A] except as to portions of same which are re-enacted by this Act."

Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

Subdivision (n) as added by acts 1933, cited to the text, repealed acts 1933, 43rd Leg., p. 34, ch. 14, which amended subdivision (j) of this article.

#### Art. 6674q—7a. [Repealed by Acts 1937, 45th Leg., p. 761, ch. 370, § 3.]

Prior to its repeal this article was Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 7a

as added Acts 1933, 43rd Leg., 1st C.S., p. 322, ch. 117, § 1.

Repeal of 1937 effective May 20, 1937.

#### [Art. 6674q—8. Restrictions as to extending State credit]

No provision of this Act shall be construed to authorize the giving or lending of the credit of the State to any county or district or to pledge the credit of the State in any manner whatever for the payment of any of the outstanding road indebtedness herein referred to of the counties or dis-

districts of the State. It is hereby declared that all eligible indebtedness, as herein defined, shall remain indebtedness of the respective counties or defined road districts which issued it, and said counties or defined road districts shall remain liable on said indebtedness according to its terms and tenor; and it is not the purpose or intention of this Act, or any part thereof, to obligate the State of Texas directly or indirectly or contingently, for the payment of any such obligations or that the State of Texas should assume the payment of said obligations, and this Act is not to be construed as obligating the State of Texas to the holders of any of said obligations to make any payment of the same, or any part thereof, nor shall such holders have any rights to enforce the appropriation of any of the monies hereinabove provided for, nor shall any provision hereof constitute a contract on the part of the State to make money available to any county for the construction of additional lateral roads, but the provisions hereof are intended solely to compensate, repay and reimburse said counties and districts for the aid and assistance they have given to the State in furnishing, advancing and contributing money for building and constructing State Highways and lateral roads, to provide for the use and application by said counties and districts of the monies which they may receive under the provisions of this Act, and under the circumstances prescribed in this Act to provide additional money to counties for the construction of additional lateral roads. As amended Acts 1939, 46th Leg., p. 582, § 1.

**Art. 6674q—8a. Bonds of navigation districts; preference over other bonds by Board of County and Road District Bond Indebtedness unauthorized**

All bonds heretofore issued by Navigation Districts of this State, which mature on or after January 1, 1933, and in so far as amounts of same were issued for and the proceeds thereof actually expended in the construction of bridges across any stream or streams or any other waterways upon any highway that constituted and comprised a part of the system of designated State Highways on September 17, 1932, shall hereafter be included within and eligible under the provisions of Chapter Thirteen of the Acts of the Forty-second Legislature of Texas, passed at its Third Called Session, as amended by the Acts of the Forty-third Legislature of Texas, Regular Session,<sup>1</sup> to the extent that the proceeds of the sale of said bonds shall have been actually expended in the construction of such bridges; and in such cases the outstanding bonds of said Navigation Districts in an amount equal to the amount so expended by such navigation districts shall be redeemed under the same conditions as is provided by said Chapter Thirteen, Acts of the Forty-second Legislature of Texas, Third Called Session, as amended by the Acts of the Forty-third Legislature of Texas, Regular Session, for the redemption of County and Road District Bonds.

It is expressly provided that the Board of County and Road District Bond Indebtedness shall not be authorized to give the bonds herein referred to preference over other similar bonds eligible under said Bond Act; and it is further expressly provided that said Board in determining the amount of bonds eligible for assumption shall take into consideration the amount of the bond money expended for the construction of said bridge and the balance due on said amount of bonds used in the construction of said bridge at the effective date of this Act; and in no event shall said Board be authorized to assume in excess of the balance due on the bonds for the said bridge construction at the effective date of this Act. Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 7, as added Acts

1937, 45th Leg., p. 277, ch. 146, § 1, as amended Acts 1939, 46th Leg., p. 582, § 1.

<sup>1</sup> Articles 6674q—1 to 6674q—11.

**Art. 6674q—8b. Combined with Art. 6674q—8a**

Article was Acts 1932, 42nd Leg., 3rd C. amending the Act of 1932, incorporated the S., p. 15, ch. 13, § 8b, as added by Acts provisions of this article as part of section 1937, 45th Leg., p. 277, ch. 146, § 1. Acts 7 of the 1932 Act. See art. 6674q—8a. 1939, 46th Leg., p. 582, § 1, generally

**Art. 6674q—8c. Lateral Road Account; punishment for unauthorized use**

It shall be unlawful for any County Judge or any County Commissioner, while acting in his official capacity or otherwise, to use any money out of the Lateral Road Account for any purpose except the purposes enumerated in this Act. If any County Judge or any County Commissioner shall knowingly expend or use, or vote for the use or agree to expend or use any sum of money accruing to any county in this State from the Lateral Road Account, for any purpose not authorized by this Act or shall knowingly make any false statement concerning the expenditure of any such money, he shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for not less than two (2) nor more than five (5) years. As amended Acts 1939, 46th Leg., p. 582, § 1.

**[Art. 6674q—9. Legislative policy; State title to roads]**

If succeeding Legislatures shall continue to carry out the policy herein defined by authorizing a similar appropriation of funds from time to time, (a) then whenever the eligible obligations shall have been fully paid as herein provided, as to, or for any county or defined road district according to the provisions of this Act, then and in that event, the title and possession of all roads, roadbeds, bridges and culverts in such county or defined road district which are included in the system of designated State Highways, shall automatically vest in fee simple in the State of Texas, and in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; and (b) whenever the interest and principal necessary to retire the outstanding indebtedness owed for lateral roads shall have been fully paid as herein provided, as to, or for any county or defined road district according to the provisions of this Act, then and in that event, the title of all roads, roadbeds, bridges and culverts, in such county or defined road district pertaining to the lateral roads, constructed with the proceeds of such indebtedness, shall automatically vest in the State of Texas, but the possession thereof shall remain in such county or defined road district, and in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; provided that when the right of way, or any part thereof, pertaining either to a State Highway or a lateral road, has been abandoned because of the abandonment of such road for all public purposes, and such right of way, or any part thereof, was donated by the owner of the land for right of way purposes, then and in that event the title to said right of way shall vest in said owner, his heirs or assigns; provided, however, that nothing in this Act shall prevent the State Highway Commission from changing or abandoning any State Highway, and if the Commission shall change or abandon any State Highway in any county, the Commissioners Court of such county shall have the right to assume jurisdiction over such portion of

such highway so abandoned by the State Highway Commission. Likewise, the title to additional lateral roads when constructed shall vest in the State of Texas. Provided, however, that this Act neither imposes the obligation on, nor confers the right in the State of Texas, to maintain and lay out any roads except those constituting a part of the designated State Highway System as hereinabove in this Act defined. The obligation to maintain or lay out all other roads, including lateral roads and additional lateral roads as defined in this Act, shall remain undisturbed in the several Commissioners Courts as agents of the State. As amended Acts 1939, 46th Leg., p. 582, § 1.

[Art. 6674q—10. Partial invalidity]

If any section, subsection, paragraph, sentence, clause, or provision of this Act shall, for any reason, be held invalid, such invalidity shall not affect any other portion of this Act or the application of such section, subsection, paragraph, sentence, clause, or provision to any other person or situation, but this Act shall be construed and enforced as if such invalid provisions had not been contained therein. As amended Acts 1939, 46th Leg., p. 582, § 1.

Art. 6674q—11. Omitted. Acts 1939, 46th Leg., p. 582, § 1

Article was derived from Acts 1932, 42nd Leg., p. 582, § 1, generally amending Acts Leg., 3rd C.S., p. 15, ch. 13, § 11, which 1932, included a new section 11. See art. repealed conflicting laws. Acts 1939, 46th 6674q—10.

Art. 6674q—11a. Effect of act

This Act shall be cumulative of all other valid laws on the subject, but in the event of a conflict between any provision of this Act and any other Act, the provisions of this Act shall prevail. Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 13, as added Acts 1939, 46th Leg., p. 582, § 1.

Art. 6674q—12. State Treasurer as ex officio county treasurer in payment of interest and sinking funds

Resolved by the Senate of Texas, the House of Representatives concurring, that it was the intention of the Legislature of the State of Texas in enacting said above named Acts to authorize and empower the Treasurer of the State of Texas to act as ex officio treasurer of such respective county and road districts in the payment of the interest and sinking funds due by the several counties of the State upon such county road bonds which are not eligible to participate in the County and Road District Highway Fund, and to receive from the respective counties the sums of money due by such respective counties for the payment of such interest and sinking funds, and to pay same upon warrants issued by the Comptroller of the State of Texas in the same manner as is provided for the payment of the interest and sinking funds upon the county road bonds which are eligible to participate in the County and Road District Highway Fund in the Acts aforesaid. Nothing herein shall be construed as increasing the liability of the State of Texas for the payment of any interest or sinking funds on any county road bonds not heretofore eligible under the provisions of the Acts aforesaid; the State Treasurer, merely for convenience of such counties, to act as ex officio treasurer in the receiving and payment of the interest and sinking funds on said county road bonds which are not eligible to participate in the County and Road

District Highway Fund. [Acts 1936, 44th Leg., 3rd C.S., p. 2115, S.C.R. # 4.]

The resolution cited to the text contained the following preamble:

"WHEREAS The Legislature of the State of Texas, in Chapter 13, Acts of 1932 of the Third Called Session of the Forty-second Legislature and Chapter 136, Acts of 1933 of the Forty-third Legislature of Texas, Regular Session, provides, among other things, for the payment by the State Treasurer of the interest and sinking funds due on county road bonds which have been issued for the construction of roads that are a part of the State Highway System and which are eligible to participate in the County and Road District Highway Fund, but said Act<sup>s</sup> do not, in express terms, authorize the State Treasurer to receive from the several counties of the State and pay to the holders of the county road bonds which are not eligible to participate in the County and Road District Highway Fund, the interest and sinking funds due thereon; and

"WHEREAS The question has been raised as to whether or not the State Treasurer can lawfully receive from the several counties of the State and thereafter pay out the interest and sinking

funds due on such county and district road bonds which are not eligible to participate in the County and Road District Highway Fund, and the Comptroller issue warrants for the payment of the interest and sinking funds due thereon; and

"WHEREAS It was the intention of the Legislature in the passage of said Bills to authorize the State Treasurer to act as ex officio treasurer of the several counties of the State in the receipt from such counties of the interest and sinking funds due on such bonds of the several counties and thereafter pay out such funds to the holders of such county road bonds which are not eligible to participate in the County and Road District Highway Fund, and it was further the purpose of the Legislature in the enactment of said Bills to authorize the State Treasurer to pay such funds upon the warrants issued by the State Comptroller as provided in said Acts, in the same manner as is provided for the payment of such interest and sinking funds upon such county road bonds which are eligible to participate in the County and Road District Highway Fund; now, therefore, be it"

Approved by Governor Oct. 22, 1936.

Art. 6674q—13. Expenditure of Federal funds on roads not part of state highway system

From and after July 1, 1937, all moneys appropriated under the Hayden-Cartwright Act, passed by the 74th Congress, June 16, 1936, (H.R. 11687),<sup>1</sup> for expenditure on roads not on the System of the State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal funds may be matched or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways; the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs, on which the application of Federal funds is prohibited or impractical. [Acts 1937, 45th Leg., p. 432, ch. 221, § 1.]

<sup>1</sup> Act of June 16, 1936, c. 582, 49 Stat. 1519.

Effective April 26, 1937.

Acts 1937, 45th Leg., p. 432, ch. 221, contained the following preamble:

"Whereas, The Federal Government has appropriated certain funds for the improvement of secondary or feeder roads and for the elimination of hazards to life at railroad grade crossings; and

"Whereas, It is necessary, in order to obtain certain of these funds, that the State furnish an equal amount of State funds, as required by the Federal Highway Act of 1921, as amended and supplemented; and

"Whereas, The State Highway Commission is authorized to accept said Federal

funds but is not permitted to expend State or Federal funds on roads which are not on the system of State Highways; and

"Whereas, Said Federal funds are a direct grant and are greatly needed for improvement of such roads and for relief of the unemployed in this State, and the State Highway Commission is desirous of utilizing said Federal funds to the fullest extent for the improvement of said roads; now, therefore,"

Section 2 repeals all conflicting laws and parts of laws and section 3 declares an emergency making the act effective on and after its passage.

## Title of Act:

An Act to authorize the State Highway Department, in conjunction with the Bureau of Public Roads, to expend, from and after July 1, 1937, upon roads not a part of the system of State Highways, funds appropriated for expenditure on such roads under the Hayden-Cartwright Act, passed by the 74th Congress, June 16, 1936,

(H.R. 11687); to permit such funds to be matched or supplemented from the State Highway Fund; expressly repealing all laws or parts of laws in conflict herewith to the extent of such conflict, but said laws are not otherwise repealed, and declaring an emergency. [Acts 1937, 45th Leg., p. 432, ch. 221.]

**Art. 6674q—14. Bonds of counties of 19,000 to 19,500 population to participate in State Highway Funds**

That all bonds which have been heretofore issued and sold by road districts in counties with a population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the next preceding Federal Census, where the proceeds of the sale of the bonds have been expended in whole or in part upon a highway which was then a part of the designated system of State Highways in Texas, and a part of the proceeds of which has been expended in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been designated as a part of the State Highway System of Texas, and where such designated parts of the State Highway System bear different highway numbers, or where one designation is numbered and the other un-numbered, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto,<sup>1</sup> including the re-enactment and extension thereof under and by virtue of the terms and provisions of House Bill No. 463, enacted by the Legislature of Texas, Forty-fifth Regular Session, 1937.

The Board of County and Road District Indebtedness is directed to audit all expenditures of the aforementioned district, and the assumption herein provided for shall extend only to such bonds, the proceeds of which were expended in the construction of the road which has subsequently been designated a State Highway. Acts 1937, 45th Leg., p. 901, ch. 437, § 1.

<sup>1</sup> Articles 6674q—7, 6674q—8.

Effective 90 days after May 22, 1937, date of adjournment

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its enactment.

## Title of Act:

An Act providing that all bonds which have been heretofore issued and sold by road districts, prior to September 17, 1932, in counties having a population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the 1930 Federal Census, the proceeds of the sale of which bonds have been expended in whole or in part upon a highway which has, since the

issuance and sale of said bonds, been designated as a part of the State Highway System, and where the proceeds of the sale of said bonds have been expended, in whole or in part, upon a highway heretofore designated as a part of the State Highway System where not more than twelve (12) miles of such highway lies within the road district issuing said bonds, shall be entitled to participate in the State Highway Funds, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and amendments thereto, as well as re-enactments thereof, and declaring an emergency. [Acts 1937, 45th Leg., p. 901, ch. 437.]

**Art. 6674r. Bonds of certain counties and road districts entitled to participate in State Highway Fund under certain conditions**

That all bonds which have been heretofore issued and sold by all road districts in counties with a population of not less than twenty-five thousand three hundred forty-four (25,344) and not more than twenty-five thousand four hundred forty-four (25,444) people, according to

the last preceding Federal Census, where the proceeds of the sale of the bonds has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been temporarily or permanently designated as a part of the State Highway System, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto.<sup>1</sup> Acts 1937, 45th Leg., p. 829, ch. 406, § 1.

<sup>1</sup> Articles 6674q—7, 6674q—8.

Effective May 28, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that all bonds which have been heretofore issued and sold by all road districts in counties with a population of not less than twenty-five thousand three hundred forty-four (25,344) and not more than twenty-five thousand four hundred forty-four (25,444) people, accord-

ing to the last preceding Federal Census, where the proceeds of the sale of bonds has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been temporarily or permanently designated as a part of the State Highway System, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and declaring an emergency. [Acts 1937, 45th Leg., p. 829, ch. 406.]

**Art. 6674s. Workmen's Compensation Insurance for Highway Department Employees**

Section 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

**Definitions**

Sec. 2. The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Department" whenever used in this law shall be held to mean the State Highway Department of Texas.

2. "Employee" shall mean every person in the service of the State Highway Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the pay roll of the State Highway Department, except officials appointed by the Governor with the advice and consent of the Senate, except clerical and office employees not required by their duties to travel or work away from their office, and except all positions for which itemized appropriations are made by the Legislature. No person in the service of the State Highway Department who is paid on a piecework basis, or on any basis other than by the hour, day, week, month, or year, shall be considered an employee and entitled to compensation under the terms and provisions of this Act. Provided further, that no person shall be classified as an "employee" nor be eligible to any compensation benefits under the terms and provisions of this Act until he shall have submitted himself first to a physical examination by a regularly licensed physician or surgeon designated by the State Highway Department to make such examination and thereafter been certified by the State Highway Department to be placed on the pay roll of the State Highway Department.

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.



5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this law.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. The terms "injury" or "Personal injury" and "injuries sustained in the course of employment" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

8. Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

#### General provisions

Sec. 3. After the effective date of this law any employee, as defined in this law, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The Department is hereby authorized to be self-insuring and is charged with the administration of this law. The Department shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the employees of the Department, the approximate number of employees, and the estimated amount of pay roll.

The Department shall give notice to all employees that, effective at the time stated in such notice, the Department has provided for payment of insurance.

Employees of the Department shall be conclusively deemed to have accepted the provisions hereof in lieu of common law or statutory causes of action, if any, for injuries resulting in the course of their employment.

#### Injury in course of employment

Sec. 4. If an employee of the Department sustains an injury in the course of his employment, he shall be paid compensation by the Department, as hereinafter provided.

#### Willful intention and intoxication of employee as defenses

Sec. 5. If an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, the Department may defend in such action on the ground that the injury was caused by the willful intention of the employee to bring about the injury, or was so caused while the employee was in a state of intoxication.

#### No right of action against agents or employees of Highway Department; compensation exempt from garnishment or attachment; assignments void

Sec. 6. Employees of the Department and parents of minor employees shall have no right of action against the agents, servants, or employees of the Department for damages for personal injuries nor shall representatives and beneficiaries of deceased employees have a right of action against the agents, servants, or employees of the Department for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the Department as is provided in this law. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits

or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

**Workmen's Compensation Act and other acts, application of**

Sec. 7. Unless otherwise provided herein Sections 6 as amended by Acts 1927, Fortieth Legislature, Page 84, Chapter 60, Section 1;<sup>1</sup> 7; 7b; 7c; 8; 8a; 8b; 9 as amended by Acts 1931, Forty-second Legislature, Page 303, Chapter 178;<sup>2</sup> 10; 11; 11a, Acts 1927, Fortieth Legislature, Page 41, Chapter 28, Section 1;<sup>3</sup> 12; 12a; 12b; 12c; 12d as amended by Acts 1931, Forty-second Legislature, Page 260, Chapter 155, Section 1;<sup>4</sup> 12e; 12f; 12i as amended by Acts of 1931, Forty-second Legislature, Page 259, Chapter 154, Section 1;<sup>5</sup> 13; 14; 15; 15a; 16; 17; 19 as amended by Acts 1927, Fortieth Legislature, Page 383, Chapter 259, Section 1, as amended by Acts 1931, Forty-second Legislature, Page 133, Chapter 90, Section 1;<sup>6</sup> Acts 1931, Forty-second Legislature, Page 415, Chapter 248, Section 1,<sup>7</sup> all being Sections of Article 8306 of the Revised Civil Statutes of Texas, 1925; Sections 4a; 6a; 11; and 12 of Article 8307, of the Revised Civil Statutes of Texas, 1925; and Sections 4 and 5 of Article 8309 of the Revised Civil Statutes of Texas, 1925, and Senate Bill 64, Acts Regular Session, Forty-fifth Legislature, are hereby adopted and shall govern in so far as applicable under the provisions of this law.<sup>8</sup> Provided that whenever in the above adopted Sections of Articles 8306, 8307, and 8309 of the Revised Civil Statutes of Texas, 1925, the words "association," "subscriber," or "employer," or their equivalents appear in such Articles, they shall be construed to and shall mean "the Department."

<sup>1</sup> Article 8306(6).

<sup>2</sup> Article 8306, § 9.

<sup>3</sup> Article 8306, § (11a).

<sup>4</sup> Article 8306, § 12d.

<sup>5</sup> Article 8306, § 12i.

<sup>6</sup> Article 8306, § 19.

<sup>7</sup> Article 8306a.

<sup>8</sup> Article 8306, § 7d.

**Attorney's fees**

Sec. 8. For representing the interest of any claimant in any manner carried from the Board into the Courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorney's fee for such representation, such fee to be determined as herein provided and, when the amount recovered exceeds the amount of the award appealed from, to include not more than one-third of the amount by which the judgment exceeds the award, such fee for services so rendered to be determined and allowed by the trial Court in which such cause may be heard and determined.

**Weekly payments of compensation**

Sec. 9. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein.

**Physical examination; effect of refusal to submit to; insanitary and injurious practices; procedure**

Sec. 10. The Board may require any employee claiming to have sustained injury to submit himself for examination before such Board or some one acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the laws of this State. If the employee or the Department requests, he or

it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Department to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

The Department shall have the privilege of having any injured employee examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Department shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto. The injured employee shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the Department, the Department shall pay the fee of the physician selected by the employee, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this law. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law.

#### **Industrial Accident Board, authority of; procedure**

Sec. 11. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law and the suit of the injured employee or person suing on account of the death of such employee shall be against the Department. If the final order of the Board is against the Department, then the Department shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the Court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in Court upon request free of charge, with a certified copy

of the notice of the Department becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any Court in this State upon trial of such claim therein pending and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the Department, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the Department, and the Department shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may bring suit in a Court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve (12) per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the Department requiring the payment to an injured employee or his beneficiaries of any weekly or monthly payments, under the terms of this law, and the Department should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employee or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve (12) per cent penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

#### **Employees of subcontractors**

Sec. 12. If the Department sublets the whole or any part of the work to be performed or done to any subcontractor, then in the event any employee of such subcontractor, whose name does not appear on the pay roll of the Department, sustains an injury in the course of his employment, he shall be deemed and taken for all purposes of this law not to be an employee as defined in this law.

#### **Records and reports of injuries**

Sec. 13. The Department shall hereafter keep a record of all injuries fatal or otherwise, sustained by its employees in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured em-

ployee, or if such incapacity extends beyond a period of sixty (60) days, the Department shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex, and occupation of the injured employee and the character of work in which he was engaged at the time of the injury, and shall state the place, date, and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The Department shall be responsible for the submission of the reports in the time specified in this Section.

**Rules and regulations; examining physicians; reports as evidence**

Sec. 14. The State Highway Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the State Highway Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the State Highway Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the State Highway Department to determine who may be physically fit to be classified as "employee" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the State Highway Department a complete transcript of said examination in writing and sworn to upon a form to be furnished by the State Highway Department. It shall be the duty of the State Highway Department to preserve as a part of the permanent records of the State Highway Department all reports of such examinations so filed with him. Such reports shall be admissible in evidence before the Industrial Accident Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Industrial Accident Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie as to the facts set out therein.

**Physical examination prerequisite to certification as employee**

Sec. 14a. No person shall be certified as an employee of the State Highway Department under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 14 herein and has been certified by the examining physician or surgeon to be physically fit to perform the duties and services to which he is to be assigned, provided that absence of a physical examination shall not be a bar to recovery.

**Award as evidence; certified copies of orders, awards, decisions, or documents**

Sec. 15. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the act of said Board in any Court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue

Fund; provided that the Department shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

**Suit to set aside decision of Board; notice**

Sec. 16. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this law, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper Court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the Court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said Court.

**Time of hearing**

Sec. 17. When an injured employee has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured employee is being paid compensation as provided in this law, and the Department is furnishing either hospitalization or medical treatment to such employee, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

**Percentage of payroll set aside in account for payments under act**

Sec. 18. The Department is hereby authorized to set aside from available appropriations other than itemized appropriations an amount not to exceed three and one-half (3½) per cent of the annual labor pay roll of the Department for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this law.

The amounts so set aside shall be set up in a separate account in the records of the Department, which account shall show the disbursements authorized by this law; provided the amounts so set aside in this account shall not exceed three and one-half (3½) per cent of the annual labor pay roll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

**Penal provisions**

Section 19 is penal provision published as Vernon's Rev. Penal Code art. 427c-1.

**Partial invalidity**

Sec. 20. If any section, paragraph, or provision of this law be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this law, but the same shall remain in full force and effect. Acts 1937, 45th Leg., p. 1352, ch. 502.

Effective June 11, 1937.

Section 21 of the act of 1937 repeals all conflicting laws and parts of laws. Section

22 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing workmen's compensation insurance for employees of the State Highway Department of Texas; defining certain terms; authorizing the State Highway Department to be self-insuring; providing that the State Highway Department shall administer this Act; prescribing the powers and duties of the Industrial Accident Board and of the State Highway Department; adopting by reference certain Legislative Acts relating to workmen's compensation insurance; providing the Industrial Accident Board and the State Highway Department may require the examination of applicants for compensation; providing for time of filing notice of injury and of claim for compensation; providing for appeals from rulings of the Industrial Accident Board; providing that the State

Highway Department shall keep permanent records and make reports to the Industrial Accident Board of injuries sustained by employees; providing for physical examination of employees and persons to be employed; providing funds for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this law; providing for reports to the Governor and to the Legislature; prescribing duties of clerks of courts in compensation cases under this law; prescribing penalty for failure to perform such duties; declaring the provisions of this Act to be severable; suspending all laws or parts of laws in conflict herewith to the extent of such conflict; and declaring an emergency. [Acts 1937, 45th Leg., p. 1352, ch. 502.]

## 2. REGULATION OF VEHICLES

### [Art. 6675a—1. Definitions of terms]

Certificate of Title Act, see Pen.Code art. 1436—1.

### Art. 6675a—3b. Repealed by Acts 1937, 45th Leg., p. 1324, ch. 489, § 1.

Prior to its repeal this article was added by Acts 1931, 42nd Leg., p. 215, ch. 127, § 1.

Effective June 9, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

### Art. 6686. Dealer's license; notice of sale or transfer

(a) Any manufacturer of or dealer in motor vehicles in this State may, instead of registering each vehicle he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number which may be attached to any motor vehicle or motorcycle which he sends temporarily upon the road. The annual fee for such dealer's registration of a general distinguishing number shall be Fifteen (\$15.00) Dollars, and additional number plates bearing said number desired by any dealer shall be assigned and registered for a fee of Five (\$5.00) Dollars each. A dealer within the meaning of this Article means any person, firm or corporation engaged in the business of selling automobiles who runs them upon the public highways or streets for demonstration for the purpose of sale; and this Act shall not be construed as permitting the use of a dealer's license or number plate on any vehicle owned or used by such a dealer for any other purpose than demonstration for the purpose of sale. Every dealer in making application for a dealer's license shall apply for same in writing on a form prescribed and provided by the State Highway Commission. The application shall state that the applicant is a dealer within the meaning of this Act, and if he holds a contract with an automobile manufacturer or distributor for the distribution or sale of motor vehicles or motorcycles he shall so state in the application, giving make of vehicle he handles and name of such manufacturer or distributor. The facts stated in such application shall be sworn to before an officer authorized to administer oaths. No dealer's license or number plates shall be issued until this Article is complied with.

(b) Each dealer holding a dealer's license may issue temporary cardboard numbers using such dealer's number thereon which may be used by any person, dealer, or manufacturer purchasing a motor vehicle, trailer, or semi-trailer. Such person purchasing a motor vehicle, trailer, or semi-trailer from a manufacturer or dealer may use such cardboard number for a reasonable length of time but in no case to exceed ten (10) days after such purchase is made. Any dealer or manufacturer may use such cardboard license plate for the purpose of operating or conveying a motor vehicle, trailer, or semi-trailer from his place of business in one part of the State to his place of business in another part of the State, and for the purpose of operating or conveying a motor vehicle, trailer, or semi-trailer from the point where it is unloaded to his place of business, and may also use such cardboard number in transporting a motor vehicle, trailer, or semi-trailer from the State line to his place of business. The form of such cardboard number shall be prescribed by the Department of Public Safety.

Any person, firm or corporation engaged in this State in the business of transporting and delivering by means of the full mount method, the saddle mount method, the tow bar method, or any other combination thereof, and under their own power, new vehicles from the manufacturer or any other point of origin to any point of destination within the State of Texas, shall make application to the State Highway Commission for a drive-a-way in-transit license. This application for annual license shall be accompanied by a registration fee of Fifty Dollars (\$50) and shall contain such information as the State Highway Commission may require. Upon the filing of the application and the payment of the fee, the State Highway Commission shall issue to each drive-a-way operator a general distinguishing number, which number must be carried and displayed by each motor vehicle in like manner as is now provided by law for vehicles while being operated upon public highways and such number shall remain on the vehicle or vehicles from the manufacturer, or any point of origin, to any point of destination within the State of Texas. Additional number plates bearing the same distinguishing number desired by any drive-a-way operator may be secured from the State Highway Commission upon the payment of a fee of Three Dollars (\$3) for each set of additional license plates. Any person, firm or corporation engaging in the business as a drive-a-way operator of transporting and delivering by means of full mount method, the saddle mount method, the tow bar method, or any combination thereof, and under their own power, new motor vehicles, who fails or refuses to file or cause to be filed an application, as is required by law, and to pay the fees therefor as the law requires, shall be found guilty of violating the provisions of this Act and upon conviction be fined not less than Fifty Dollars (\$50) and not more than Two Hundred Dollars (\$200) and all the costs of Court. Each day so operating without securing the license and plates as required herein shall constitute a separate offense within the meaning of this Act. The funds collected herein shall be paid into the General Revenue Fund of this State subject only to appropriation by the Legislature. As added Acts 1939, 46th Leg., p. 613, § 1.

Effective June 2, 1939.

Section 2 of the amendatory Act of 1939 the Act should take effect from and after declared an emergency and provided that its passage.

(c) Every motor vehicle that has been driven under its own power, or towed by another vehicle from the point where manufactured outside this State for the purpose of sale within this State, shall have affixed to the windshield or front thereof in plain view a sticker not less



than three inches in diameter stating that such vehicle has been driven or towed from point where manufactured. Such notice shall remain on such vehicle until the sale thereof by the dealer.

(d) Manufacturer to give notice of sale of transfer. Every manufacturer or dealer, upon transferring a motor vehicle, trailer, or semi-trailer, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall immediately give written notice of such transfer to the Registration Division of the State Highway Department upon the official form provided by the State Highway Department. Every such notice shall contain the date of such transfer, names and addresses of the transferrer and transferee and such description of the vehicle as may be called for in such official form.

(e) All registration fees shall be paid in the county in which the owner lives at the time of registration of said motor vehicle.

(f) Any person found guilty of violating any of the provisions of this Act shall, upon conviction, be fined not less than Fifty (\$50.00) Dollars and not more than One Hundred Fifty (\$150.00) Dollars, and all costs of court. [As amended Acts 1937, 45th Leg., p. 302, ch. 158, § 1.]

Amendment of 1937, effective April 15, 1937.

Section 2 of the amendatory Act of 1937, declared an emergency making the act effective on and after its passage.

#### Art. 6687a. Driver's licenses

Section 1. Definitions: The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this Section except in those instances where the context indicates a different meaning:

(a) "Vehicle": Every self-propelled device upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively on stationary rails or tracks.

(b) "Motor Vehicle": Every vehicle as herein defined, which is self-propelled.

(c) "Farm Tractor": Every motor vehicle designed and used primarily as a farm implement for drawing plows, sowing machines and other implements of husbandry.

(d) "Implements of Husbandry": The words "implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, namely: cultivators, farm tractors, reapers, binders, tractors, combines, or mowing machinery, but shall not include any automobile or truck.

(e) "Person": Every natural person, firm, copartnership, association, corporation, or person, jointly and severally, who are members of any firm, copartnership, association or corporation, or persons.

(f) "Operator": Every person, other than a chauffeur who is in actual physical control of a motor vehicle upon a highway.

(g) Chauffeur. Any person who operates a motor vehicle for any purpose, whole or part time, as an employee, servant, agent, or independent contractor, whether paid in salary or commission; and every person who operates a motor vehicle while such vehicle is in use for hire or lease. As amended Acts 1937, 45th Leg., p. 752, ch. 369, § 1-A.

Effective May 20, 1937.

(h) "Non-resident": Every person who is not a resident of this State.

(i) "Highway": Any road, street, way, thoroughfare or bridge in this State, not privately owned or controlled, for the use of vehicles over which the State has legislative jurisdiction under its police power.

(j) "Department": The Department of Public Safety of the State of Texas acting directly or through its duly authorized officers or agents.

(k) School Bus. Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 1-B.]

Effective May 19, 1937.

Section 9 of the amendatory Act of 1937, repeals all conflicting laws and parts of laws. Sec. 10 provides that if any part or parts of this Act shall be held to be unconstitutional, such unconstitution-

ality shall not affect the validity of the remaining parts of this Act. Section 11 declared an emergency and provided that the act should take effect from and after its passage.

#### Sec. 6—A. Examination of Applicants.

(a) The Department shall examine every applicant for an operator's or chauffeur's license except as otherwise provided in this Act. Such examination shall be held in the county where applicant resides or makes application. It shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning and directing traffic, his knowledge of the traffic rules of this State, and shall further include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle and such further physical and mental examination as the Department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. No fee shall be charged for examination of any applicant for any driver's license. Duly designated agents of the Department are hereby authorized and empowered to administer oaths in connection with applications, examinations, and issuance of licenses.

(b) The Department or its designated agents shall issue without examination and without charge an operator's license to any person applying therefor who has previously held a valid operator's license issued by the Department, and who is qualified under the provisions of this Act to receive a license, and to any person applying therefor within three (3) months after this section takes effect who furnishes evidence satisfactory to the Department that he is qualified under the provisions of this Act, and that he has previously operated a motor vehicle in a satisfactory manner for a period of not less than one (1) year. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 1.]

Effective May 20, 1937.

Sec. 7. Examinations for chauffeurs and operators—Designation of Local Officers. The Department is hereby vested with authority to conduct and hold examination of applicants for operators' and chauffeurs' licenses, and to issue such licenses under the provisions of this law; and such examination to be held and conducted under such reasonable rules and regulations as may be prescribed by the Department. The Department may, when deemed to be necessary, designate the Assessor and Collector of Taxes of any county as an agent of the Department with authority to issue any and all renewals of licenses under the supervision and regulation of the Department. When licenses are issued by such designated agent of the Department, such agent shall be allowed a fee of five cents (5¢) for each operator's or chauffeur's license renewal so issued by him which fee shall be an accountable fee of office and which fee shall be paid monthly by the Department upon receipt of statements from such officers. As amended Acts 1937, 45th Leg., p. 752, ch. 369, § 2.

Effective May 20, 1937.

**Sec. 8. Register of Operators and Chauffeurs:**

(a) The Department shall issue to every person licensed as an operator, an operator's license, and to every person licensed as a chauffeur, a chauffeur's license. Every chauffeur shall apply for and receive from the Department, and at all times while operating a motor vehicle for hire shall display in plain sight upon the band of his cap or on the lapel of his outer coat, a chauffeur's badge. All persons licensed as chauffeurs shall be issued by the Department an operator's license at no additional cost other than fee now provided by law for chauffeur's license.

(b) Every such license shall bear thereon a distinguishing number assigned to the license and shall contain the name, age, residence address and a brief description of the licensee for the purpose of identification, and also a space for the signature of the licensee.

(c) Every chauffeur's badge shall be of metal with a plainly readable distinguishing number assigned to the licensee stamped thereon. As amended Acts 1937, 45th Leg., p. 752, ch. 369, § 8.

Effective May 20, 1937.

**Sec. 8-A. Restricted Licenses.**

(a) The Department upon issuing an operator's or chauffeur's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the Department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The Department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(c) The Department may, upon receiving satisfactory evidence of any violation of the restrictions of such license, suspend or revoke the same, but the licensee shall be entitled to a hearing as upon a suspension or revocation under this Act.

(d) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him. As added Acts 1937, 45th Leg., p. 752, ch. 369, § 3.

Effective May 20, 1937.

**Sec. 8-B. Notice of Change of Address or Name.** Whenever any person after applying for or receiving an operator's or chauffeur's license shall move from the address named in such application or in the license issued to him or when the name of a licensee is changed by marriage or otherwise such person shall within ten (10) days thereafter notify the Department in writing of his old and new addresses or of such former and new names and of the number of any license then held by him. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 3.]

Effective May 20, 1937.

**Sec. 8-C. Records to be Kept by the Department.**

(a) The Department shall file every application for a license received by it and shall maintain suitable indices, containing, in alphabetical order:

1. All applications denied and on each thereof note the reasons for such denial;
2. All licenses issued; and
3. The name of every licensee whose license has been suspended or revoked by the Department and after each such name note the reasons for such action.

(b) The Department shall also file all accident reports and abstracts of Court records of convictions received by it under the laws of this State, and in connection therewith maintain convenient records or make suitable notations, in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the Department, upon any application for renewal of license and at other suitable times. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 3.]

Effective May 20, 1937.

#### Sec. 9-A. Authority of Department to Cancel License.

(a) The Department is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled and any chauffeur's badge to the Department. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 4.]

Effective May 20, 1937.

#### Sec. 9-B. Suspending Privileges of Non-residents and Reporting Convictions.

(a) The privilege of driving a motor vehicle on the highways of this State given to a non-resident hereunder shall be subject to suspension or revocation by the Department in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

(b) The Department is further authorized, upon receiving a record of the conviction in this State of a non-resident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the State wherein the person so convicted is a resident. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 4.]

Effective May 20, 1937.

Sec. 9-C. Suspending Resident's License Upon Conviction in Another State. The Department is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another State of an offense therein which, if committed in this State, would be grounds for suspension or revocation of the license of an operator or chauffeur. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 4.]

Effective May 20, 1937.

#### Sec. 11. Expiration of Licenses, Fees therefor, and Disposition of Same:

(a) Every operator's license shall expire within three years from date of issuance, and shall be renewed on or before April 1, 1939, and each three years thereafter, upon presentation of valid license previously issued under this Act.

(b) Every chauffeur's license issued hereunder shall expire one year from date of issuance, and shall be renewed annually upon application and payment of the fees required by law, and upon presentation of a valid chauffeur's license previously issued under this Act.

(c) The Department shall provide and furnish suitable forms and blanks for application, registration and license cards or blanks, and all

other forms requisite for the purposes of this Act, and shall prepay all transportation charges on same to its designated agencies.

(d) No fee shall be charged or collected for the original issuance of an operator's license. The annual fee for a chauffeur's license shall be Three (\$3.00) Dollars.

(e) All fees and charges required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week with duplicate and triplicate copies of each license issued, to the Department at Austin, Texas, and all such fees so collected shall be deposited in the State Treasury in a fund to be known as the "Operators' and Chauffeurs' License Fund," which fund shall be kept separate by the State Treasurer. All moneys in the Operators' and Chauffeurs' License Fund or as much thereof as may be necessary is hereby appropriated for the purpose of defraying the expenses of administering this Act through the biennium ending August 31, 1939, including the employment of necessary clerical and administrative help, and defraying the necessary expenses incident to any judicial hearing relative to the suspension and/or revocation of licenses, and including printing and transportation of all necessary forms, licenses, and badges hereinbefore provided, and including the payment of five cents (5¢) fee required under Section 7 hereof, and including the purchase through bids taken by the Board of Control of all necessary furniture and fixtures. All examination fees required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week with duplicate and triplicate copies of each application for examination, to the Department in Austin, Texas, and all such fees so collected shall be deposited in the aforesaid Operators' and Chauffeurs' License Fund, and all moneys paid in as examination fees or charges or as much thereof as may be necessary, is hereby appropriated for the purpose of defraying the expenses of administering examinations under this Act, through the biennium ending August 31, 1939, including the employment of necessary administrative and clerical help and defraying the necessary expenses incident to the giving of examinations, and including the printing and transportation of all necessary forms for applications and examinations. Providing further that no salaries shall be paid out of the fund hereby appropriated in excess of the salaries paid for like or similar services under the terms of the general Departmental bill and providing further that all disbursements hereunder shall be by warrant issued by the Comptroller upon vouchers drawn by the Chairman of the Department of Public Safety Commission, and approved by one other member of the Commission, and such vouchers shall be accompanied by itemized sworn statements of the expenditures for which they are issued. [As amended Acts 1937, 45th Leg., p. 752, ch. 369, § 4-A.]

Effective May 20, 1937.

#### Sec. 15. When Court to Report Convictions.

(a) Whenever any person is convicted of any offense for which this Act makes mandatory the revocation of the operator's or chauffeur's license of such person by the Department, the Court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted and the court shall thereupon forward the same together with a record of such conviction to the Department, within ten (10) days from date of conviction.

(b) Every court having jurisdiction over offenses committed under this Act, or any other Acts of this State regulating the operation of motor vehicles on highways, shall forward to the Department a record of

the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted.

(c) For the purpose of this Act the term, "conviction," shall mean a final conviction. Also, for the purpose of this Act, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. As amended Acts 1937, 45th Leg., p. 752, ch. 369, § 5.

Effective May 20, 1937.

#### Sec. 16-A. Authority of Department to Suspend or Revoke License.

(a) Before suspending the license of any person as in this Section authorized, the Department shall provide for a hearing and immediately notify the licensee in writing and shall afford him an opportunity to attend the hearing as early as practical, such hearing to be set within not to exceed twenty (20) days, which shall be in a court of competent jurisdiction, after receipt of such notices by the licensee. Such hearing shall be held in the county wherein the licensee resides unless the Department and the licensee agree that such hearing may be held in some other county. Upon such hearing the Department's duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the Department shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license.

(b) Upon such hearing the evidence having been heard and the records having been examined, the Department is authorized to suspend or revoke the license of an operator or chauffeur upon determining that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;
2. Has been responsible as a driver for any accident resulting in the death or personal injury of another or serious property damage;
3. Is an habitually reckless or negligent driver of a motor vehicle;
4. Is an habitual violator of the traffic law;
5. Is incompetent to drive a motor vehicle;
6. Has permitted an unlawful or fraudulent use of such license; or
7. Has committed an offense in another State, which if committed in this State would be grounds for suspension or revocation. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 6.]

Effective May 20, 1937.

Sec. 16-B. Period of Suspension or Revocation. The Department shall not suspend a license for a period of more than one (1) year, and upon revoking a license shall not in any event grant application for a new license until the expiration of the period for which said license was cancelled. As added Acts 1937, 45th Leg., p. 752, ch. 369, § 6.

Effective May 20, 1937.

Sec. 16-C. Surrender and Return of License and Badge. The Department, upon suspending or revoking a license, shall require that such license and the badge of any chauffeur whose license is suspended or revoked shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license and any chauffeur's badge so surrendered shall be returned to the licensee. As added Acts 1937, 45th Leg., p. 752, ch. 369, § 6.

Effective May 20, 1937.

**Sec. 16-D. No Operation Under Foreign License During Suspension or Revocation in This State.** Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this Act shall not operate a motor vehicle in this State under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this Act. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 6.]

Effective May 20, 1937.

**Sec. 17. Right of Appeal to Courts.** Any person denied a license or whose license has been cancelled, suspended, or revoked by the Department except where such cancellation or revocation is mandatory under the provisions of this Act shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the County Court at Law in the county wherein such person shall reside, or if there be no County Court at Law therein, then in the County Court of said county, and such Court is hereby vested with jurisdiction, and it shall be its duty to set the matter for hearing upon ten (10) days written notice to the Department, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation, or revocation of license under the provisions of this Act. Said injured party shall have the right to have his case heard in the County Court, either in term time or vacation of said Court. [As amended Acts 1937, 45th Leg., p. 752, ch. 369, § 7.]

Effective May 20, 1937.

**Sec. 19-A. Driving While License Suspended or Revoked.** No person whose operator's or chauffeur's license, or driving privilege as a non-resident has been cancelled, suspended, or revoked as provided in this Act shall drive any motor vehicle upon the highways of this State while such license or privilege is cancelled, suspended, or revoked. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 8.]

Effective May 20, 1937.

**Sec. 19-B. Permitting Unauthorized Minor to Drive.** No person shall cause or knowingly permit his child or ward under the age of sixteen (16) years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this Act. As added Acts 1937, 45th Leg., p. 752, ch. 369, § 8.

Effective May 20, 1937.

**Sec. 19-C. Permitting Unauthorized Persons to Drive.** No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this Act. As added Acts 1937, 45th Leg., p. 752, ch. 369, § 8.

Effective May 20, 1937.

**Sec. 19-D. Employing Unlicensed Chauffeur.** No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided in this Act. As added Acts 1937, 45th Leg., p. 752, ch. 369, § 8.

Effective May 20, 1937.

**Sec. 19--E. Renting Motor Vehicle to Another.**

(a) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a non-resident, then duly licensed under the laws of the State or Country of his residence, except a non-resident whose home State or Country does not require that an operator be licensed.

(b) No person shall rent a motor vehicle to another until he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(c) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer, or officer or employee of the Department. [As added Acts 1937, 45th Leg., p. 752, ch. 369, § 8.]

Effective May 20, 1937.

**Art. 6699. County traffic officers**

The Commissioners Court of each county, acting in conjunction with the Sheriff, may employ not more than two (2) regular deputies, nor more than two (2) additional deputies for special emergency to aid said regular deputies, to be known as county traffic officers to enforce the highway laws of this State regulating the use of the public highways by motor vehicles. Said deputies shall be, whenever practicable, motorcycle riders, and shall be assigned to work under the direction of the Sheriff. They shall give bond and take oath of office as other deputies. They may be dismissed from service on request of the Sheriff whenever approved by the Commissioners Court, or by said Court on its own initiative, whenever their services are no longer needed or have not been satisfactory. The Commissioners Court shall fix their compensation prior to their selection, and may provide at the expense of the county, necessary equipment for said officers. The pay of said deputies shall not be included in the settlements of the Sheriff in accounting for the fees of office. For the purpose of this law, the Commissioners Courts of counties whose funds from the motor registration fees provided herein amount to Thirty Thousand Dollars (\$30,000) or over, may use not exceeding five (5) per cent of said funds; and not to exceed seven and one-half (7½) per cent of such funds in counties receiving a lesser amount from such registration. Said deputies shall at all times cooperate with the police department of each city or town within the county, in the enforcement of said traffic laws therein and in all other parts of the county, and shall have the same right and duty to arrest violators of all laws as other Deputy Sheriffs have. As amended Acts 1937, 45th Leg., p. 438, ch. 225, § 1.

Amendment of 1937, effective April 26, 1937.

See Department of Public Safety, art. 4413(1) et seq.

Section 2 of the amendatory acts of 1937 declared an emergency making the act effective on and after its passage.

**CHAPTER TWO—ESTABLISHMENT OF COUNTY ROADS**

**Art. 6704. Classes of roads; cattle guards across roads authorized in counties of 5,690 to 5,750 population; penalty**

The Commissioners Court shall classify all public roads in their counties as follows:



1. First class roads shall be clear of all obstructions, and not less than forty (40) feet nor more than one hundred (100) feet wide; all stumps over six (6) inches in diameter shall be cut down to six (6) inches of the surface and rounded off, and all stumps six (6) inches in diameter and under, cut smooth with the ground, and all causeways made at least sixteen (16) feet wide, no first or second class road shall be reduced to a lower class.

2. Second class roads shall conform to the requirements of first class roads except that they shall be not less than forty (40) feet wide.

3. Third class roads shall not be less than twenty (20) feet wide and the causeway not less than twelve (12) feet wide; otherwise they shall conform to the requirements of first class roads.

4. Any county in this State containing a population of not less than five thousand, six hundred and ninety (5,690) nor more than five thousand, seven hundred and fifty (5,750), according to the last preceding Federal Census, may by a majority vote of the Commissioners Court thereof authorize the construction of cattle guards across any or all of the first class, second class, or third class roads in said county, and such cattle guards shall not be classed or considered as obstructions on said roads.

The Commissioners Court of any county coming under the provisions of this Act shall within sixty (60) days after this Act takes effect, provide proper plans and specifications of a standard cattle guard to be used on the roads of said county, said plans and specifications to be plainly written, supplemented by such drawings as may be necessary and shall be available to the inspection of the citizenship of such county. After said Commissioners Court provides said proper plans and specifications of a standard cattle guard to be used on the roads of said county any person constructing any cattle guard that is not in accordance with said approved plans and specifications prepared by said Commissioners Court shall be deemed guilty of obstructing said roads of said county, and the person responsible for such improper construction of said cattle guards shall be deemed guilty of a misdemeanor, and shall be fined not less than Five Dollars (\$5) nor more than One Hundred Dollars (\$100).

The Commissioners Court of any county coming under the provisions of this Act is hereby authorized and empowered to construct cattle guards on the first class, second class, and third class roads of said county and pay for same out of the Road and Bridge Funds of said county when in their judgment they believe the construction of such cattle guards to be to the best interest of the citizens of said county. As amended Acts 1939, 46th Leg., Spec.L., p. 940, § 1.

Effective April 24, 1939. act should take effect from and after its  
Section 2 of the amendatory Act of 1939 passage.  
declared an emergency and provided that the

## CHAPTER THREE—MAINTENANCE OF ROADS

### 5. DRAINAGE

Art. 6789a. Acquiring right of way for diversion of streams and drainage channels in locating, relocating, or maintaining roads [New].

### 5. DRAINAGE

Art. 6789a. Acquiring right of way for diversion of streams and drainage channels in locating, relocating, or maintaining roads

Any Commissioners' Court is hereby authorized and empowered to acquire by purchase or by condemnation any new or wider right-of-

way or land not exceeding one hundred (100) feet in width for stream bed diversion and drainage channels only in connection with the locating, relocating, construction, reconstruction or maintenance of any public road, and to pay for the same out of the County Road and Bridge Fund or out of any available county funds. Acts 1939, 46th Leg., p. 484, § 1.

Effective June 7, 1939.

Section 2 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act authorizing Commissioners' Court to acquire by purchase or by condemnation any new or wider right-of-way or land not

exceeding one hundred (100) feet in width for stream bed diversion and drainage channels in connection with the locating, relocating, construction, reconstruction or maintenance of any public road; and to pay for the same out of the County Road and Bridge Fund or out of any available county funds; repealing all laws in conflict herewith; and declaring an emergency. Acts 1939, 46th Leg., p. 484.

## TITLE 117—SALARIES

Art.

6819a—1. Salary of State's Attorney before Court of Criminal Appeals [New].

Art.

6819a—2. Salaries of District Judges in counties of 325,000 to 350,000 [New].

6819e. Salaries of judges of District Courts [New].

### Article 6813. Enumeration

Governor's annual salary fixed at \$12,000, effective third Tuesday in January, 1937, by Const. art. 4, § 5.

Salaries of Secretary of State, Attorney

General, Comptroller of Public Accounts, State Treasurer and Commissioner of the General Land Office, see Const. art. 4, §§ 21-23.

### Art. 6819a. Salaries of Supreme and Appellate Court judges

From and after August 31, 1937, the Judges of the Supreme Court and the Judges of the Court of Criminal Appeals of this State shall each be paid an annual salary of Eight Thousand (\$8,000.00) Dollars, payable in equal monthly installments; Judges of the Supreme Court Commission of Appeals and Judges of the Commission in Aid of the Court of Criminal Appeals shall each be paid an annual salary of Seven Thousand Five Hundred (\$7,500.00) Dollars, payable in equal monthly installments; Judges of the several Courts of Civil Appeals of this State shall each be paid an annual salary of Six Thousand Five Hundred (\$6,500.00) Dollars, payable in equal monthly installments. [As amended Acts 1937, 45th Leg., p. 458, ch. 232, § 1.]

Effective Sept. 1, 1937.

Section 2 of this Act repeals all conflicting laws and parts of laws, section 3 provides that if any section is held invalid, such invalidity shall not affect the remainder and section 4 declares an emergency to give effect to the act on and after

its passage, but the vote thereon was not recorded.

That portion of this article which fixes the salaries of the Judges of the various District Courts and of the Criminal District Courts was repealed by Acts 1937, 45th Leg., p. 11, ch. 10, § 2.

### Art. 6819a—1. Salary of State's Attorney before Court of Criminal Appeals

Sec. 1-a. The State's Attorney before and in Aid of the Court of Criminal Appeals shall be paid an annual salary of Six Thousand (\$6,000.00) Dollars, payable in equal monthly installments. [Acts 1937, 45th Leg., p. 458, ch. 232, § 1.]

Effective Sept. 1, 1937.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Art. 6819a—2. Salaries District Judges in counties of 325,000 to 350,000**

Sec. 1-b. The District Judges of counties having a population of 325,000 and not over 350,000 according to the last preceding Federal Census shall receive the salary of Seven Thousand Five Hundred (\$7,500.00) Dollars per year including the salary as Juvenile officers; providing that only Five Thousand (\$5,000.00) Dollars be paid out of State Funds and Two Thousand Five Hundred (\$2,500.00) Dollars out of County Funds. Acts 1937, 45th Leg., p. 458, ch. 232, § 1.

Effective Sept. 1, 1937.

**Art. 6819e. Salaries of judges of District Courts**

From and after the passage of this Act, the Judges of the various District Courts and of the Criminal District Courts of this State shall each be paid an annual salary of Five Thousand Dollars (\$5,000), payable in equal monthly installments. Acts 1937, 45th Leg., p. 11, ch. 10, § 1.

Effective Feb. 17, 1937.

Section 3, of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Criminal District Courts of this State; repealing that portion of Section 1, of House Bill No. 417, Chapter 355, of the Acts of the Regular Session of the Forty-fourth Legislature which fixes the salaries of said Judges, and declaring an emergency. [Acts 1937, 45th Leg., p. 11, ch. 10.]

**Title of Act:**

An Act to fix the salaries of the Judges of the various District Courts and of the

**Art. 6824. [7086] [4853] Change in salary**

Acts 1939, 46th Leg., p. 619, effective April 24, 1939, read as follows:

"Sec. 1. The salaries of all State officers and all State employees except those Constitutional State officers whose salaries are specifically fixed by the Constitution, shall be, for the period beginning September 1, 1939, and ending August 31, 1941, in such sums or amounts as may be provided for by the Legislature in the general appropriation bills. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of court fees and receipts, to be paid to the clerks and other employees of the Courts of Civil Appeals,

the Supreme Court and the Court of Criminal Appeals.

"Sec. 2. All laws and parts of laws fixing the salaries of all State officers and employees, except those Constitutional State officers whose salaries are specifically fixed by the Constitution, are hereby specifically repealed in so far as they are in conflict with this Act. It is specifically declared to be one of the intents hereof that any and all laws authorizing payment of supplemental salaries from court receipts and fees to clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals, are repealed in so far as they are in conflict with this Act."

**TITLE 118—SEAWALLS**

**Art. 6830. [5585] Commissioners' court may construct levees**

**Sea Walls**

Laws relating to the construction and maintenance of sea walls, breakwaters and shore protection and making donations of taxes have been enacted as follows:

Aransas Pass. Acts 1920, 36th Leg., 3rd C.S., p. 32, ch. 22, as amended by Acts 1939, 46th Leg., Spec.L., p. 989.

Corpus Christi. Acts 1921, 37th Leg., p. 270, ch. 138, as amended by Acts 1939, 46th Leg., Spec.L., p. 981.

Rockport. Acts 1920, 36th Leg., 3rd C.S., p. 34, ch. 23, as amended by Acts 1939, 46th Leg., Spec.L., p. 973.

For complete text of the above enumerated laws, see notes to Article 6830 of Vernon's Annotated Texas Statutes.

## TITLE 120—SHERIFFS AND CONSTABLES

Art.	1. SHERIFFS	Art.	property valuation of over \$100,- 000,000 [New].
6869b.	Appointment of deputies in counties of less than 20,000 population and	6871a.	Violation of Act; penalty [New].

## 1. SHERIFFS

**Art. 6869b.** Appointment of deputies in counties of less than 20,000 population and property valuation of over \$100,000,000

Provided that in counties having a population of less than twenty thousand (20,000), according to the last preceding Federal Census, and having a property valuation in excess of One Hundred Million Dollars (\$100,000,000), according to the approved State and County tax rolls for the preceding year, the sheriff, in the manner now prescribed by law, shall have the authority to appoint not to exceed fourteen (14) deputies, said number to include Court bailiffs and jailers, and said deputies to receive the compensation now allowed by law. Added Acts 1939, 46th Leg., Spec.L., p. 944, § 1.

Approved April 7, 1939.  
Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 6871.** 7127, 4898 May employ guards

Whenever in any county it becomes necessary to employ guards for the safekeeping of prisoners and the security of jails, the Sheriff may, with the approval of the Commissioners Court, or in case of emergency, with the approval of the County Judge, employ such number of guards as may be necessary; and his account therefor, duly itemized and sworn to, shall be allowed by said Court, and paid out of the County Treasury. Provided further, that in all counties in this State, having a population of more than one hundred and forty thousand (140,000) inhabitants and less than two hundred and ninety thousand (290,000) inhabitants, according to the last preceding Federal Census, no guard, matron, jailer, or turnkey shall work more than eight (8) hours in one day. In all counties coming under the provisions of this Act, at least one man shall be on guard on each floor of said jail where male prisoners are kept, and at least one matron shall be on guard on each floor where female prisoners are kept; and that not less than two (2) employees shall be on guard in the main office of said jail at any one time. In case of emergency, those coming under the provisions of the Act shall be subject to the call of the Sheriff. As amended Acts 1939, 46th Leg., Spec.L., p. 943, § 1.

Effective May 11, 1939.

Section 2 of the act of 1939 is published as art. 6871a; section 3 repeals all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the act should take effect from and after its passage.

**Art. 6871a.** Violation of Act; penalty

Anyone charged with the responsibility of enforcing this Act<sup>1</sup> shall be guilty of a misdemeanor if convicted of violating any of the provisions of this Act, and upon conviction thereof shall be fined not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200). Acts 1939, 46th Leg., Spec.L., p. 943, § 2.

<sup>1</sup> Article 6871.

Effective May 11, 1939.

For sections 3, 4, see notes under art. 6871, ante.

## TITLE 121—STOCK LAWS

## CHAPTER ONE—MARKS AND BRANDS

Art.

6899c. Marks and brands of livestock in Jasper and Newton Counties [New].

Art.

6899d. Brands in Brazoria County [New].  
6899e. Marks and brands of livestock in Chambers county [New].**Art. 6899c. Marks and brands of livestock in Jasper and Newton Counties**

This Act shall apply to Jasper and Newton Counties only. In said Counties each owner of any livestock mentioned in Chapter 1, of Title 121, of the Revised Civil Statutes of Texas, of 1925,<sup>1</sup> shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the Counties; and providing that such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said Counties first recorded the same in the Counties, or in event it can not be ascertained from the records who first recorded same in the Counties, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said Counties shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said Counties. Immediately upon the taking effect of this Act the County Clerk of the Counties shall have this Act published in some newspaper of general circulation in the Counties for a period of thirty (30) days, which publication shall be paid for by the Counties out of the General County Fund. As added Acts 1937, 45th Leg., p. 652, ch. 322, § 1.

<sup>1</sup> Articles 6890-6899b.

Effective 90 days after May 22, 1937, date of adjournment.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act relating to marks and brands of livestock in Jasper and Newton Counties; amending Article 6899 of the Revised Civil Statutes of Texas, by adding thereto a new Section to be known as Article 6899c, requiring that each owner of any livestock mentioned in Chapter 1, of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect, have his mark and brand for such stock recorded at the office of the County Clerk of said Counties; and pro-

viding that such owners shall so record such marks and brands whether heretofore recorded or not and that after the expiration of six (6) months from the taking effect of this Act all records and marks and brands now in existence in Jasper and Newton Counties shall no longer have any force or effect and that after the expiration of six (6) months only the records made after this Act shall be effective and considered the recorded marks and brands in said Counties; and further providing that the County Clerk shall publish this Act in some newspaper in general circulation in said Counties for a period of thirty (30) days; and declaring an emergency. [Acts 1937, 45th Leg., p. 652, ch. 322.]

**Art. 6899d. Brands in Brazoria County**

This Act shall apply to Brazoria County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months aft-

er this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it can not be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of said County shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund. Acts 1939, 46th Leg., Spec.L., p. 516, § 1.

Effective May 18, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act relating to marks and brands of livestock in Brazoria County only; amending Article 6899 of the Revised Civil Statutes of Texas, by adding thereto a new Section to be known as Article 6899d requiring that in said County each owner of any livestock mentioned in Chapter 1, of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect, have his mark and brand for such stock recorded at the office of the County Clerk of said County;

and providing that such owners shall so record such marks and brands whether heretofore recorded or not and that after the expiration of six (6) months from taking effect of this Act all records and marks and brands now in existence shall no longer have any force or effect and that after the expiration of six (6) months only the records made after this Act shall be effective and considered the recorded marks and brands in said County; and further providing that the County Clerk of said County shall publish this Act in some newspaper in general circulation in the County for a period of thirty (30) days; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 516.

**Art. 6899e. Marks and Brands of Livestock in Chambers County**

This Act shall apply to Chambers County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County; without any cost to owner and providing that such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period of thirty

(30) days, which publication shall be paid for by the County out of the General County Fund. Acts 1939, 46th Leg., Spec.L., p. 517.

Effective May 15, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act relating to marks and brands of livestock in Chambers County, requiring that each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect, have his mark and brand for such stock recorded at the office of the County Clerk of said County; without any cost to owner and providing that such owners shall so record such

marks and brands whether heretofore recorded or not and that after the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in Chambers County shall no longer have any force or effect and that after the expiration of six (6) months only the records made after this Act shall be effective and considered the recorded marks and brands in said County; and further providing that the County Clerk shall publish this Act in some newspaper in general circulation in said County for a period of thirty (30) days; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 517.

## CHAPTER SIX—STOCK RUNNING AT LARGE

### Art. 6954. 7235 Petition

Upon the written petition of one hundred (100) freeholders of any of the following Counties: Anderson, Aransas, Armstrong, Atascosa, Austin, Archer, Bastrop, Baylor, Bandera, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brazos, Brewster, Briscoe, Brown, Brooks, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Castro, Chambers, Cass, Clay, Cherokee, Childress, Collingsworth, Coleman, Collin, Colorado, Cooke, Comanche, Concho, Crockett, Coryell, Cottle, Crosby, Cochran, Crane, Dallas, Dawson, Deaf Smith, Delta, Dallam, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, El Paso, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Fisher, Freestone, Frio, Gaines, Galveston, Goliad, Gray, Gregg, Guadalupe, Garza, Glasscock, Gillespie, Gonzales, Grimes, Grayson, Hale, Hamilton, Hansford, Harris, Harrison, Hays, Haskell, Hall, Hardeman, Hartley, Henderson, Hidalgo, Hill, Hood, Hopkins, Howard, Hockley, Hudspeth, Hunt, Hutchinson, Irion, Jeff Davis, Jim Hogg, Jim Wells, Jack, Jackson, Jones, Jefferson, Johnson, Karnes, Kaufman, Kent, Kimble, Knox, Kerr, Kendall, Kleberg, Lamar, Lampasas, Lavaca, Lamb, Lee, Leon, Limestone, Lynn, Lipscomb, Llano, Live Oak, Liberty, Lubbock, Madison, Mason, McLennan, Matagorda, McCulloch, Menard, Moore, Marion, Martin, Maverick, Medina, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Navarro, Nacogdoches, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Panola, Polk, Rains, Randall, Red River, Reagan, Reeves, Real, Refugio, Robertson, Rockwall, Runnels, Rusk, San Patricio, San Saba, San Jacinto, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Starr, Sutton, Swisher, Tarrant, Tom Green, Taylor, Terrell, Throckmorton, Titus, Travis, Upshur, Uvalde, Victoria, Val Verde, Van Zandt, Washington, Walker, Waller, Webb, Williamson, Wilson, Wise, Ward, Wharton, Wood, Wheeler, Winkler, Wichita, Wilbarger, Young, Zapata, and Zavala, or upon the petition of fifty (50) freeholders of any such subdivision of a county as may be described in the petition, and defined by the Commissioners Court of any of the above-named Counties, Commissioners Court of said County shall order an election to be held in such County or such subdivision of a county as may be described in the petition and defined by the Commissioners Court on the day named in the order for the purpose of enabling the freeholders of such county or subdivision of a county as may be described in the petition and defined by the Commissioners

Court to determine whether horses, mules, jacks, jennets, and cattle shall be permitted to run at large in such county or such subdivision of a county as may be described in the petition and defined by the Commissioners Court. As amended Acts 1937, 45th Leg., p. 382, ch. 189, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1916, ch. 35, § 1; Acts 1939, 46th Leg., Spec.L., p. 947, § 1.

Effective March 18, 1939.

Section 2 of the amendatory act of 1939 the act should take effect from and after declared an emergency and provided that its passage.

#### Art. 6954a. Election as to domestic turkeys running at large

Upon the written petition of twenty-five (25) freeholders of any political subdivision of Blanco, DeWitt, Gonzales, Gillespie, Guadalupe, Parker and Wise Counties, the Commissioners Courts of such Counties shall order an election to be held in such subdivisions, which subdivisions shall be described in the petition and defined by the Commissioners Courts, on the day named in the order for the purpose of enabling the freeholders of such subdivisions to determine whether domestic turkeys shall be permitted to run at large in such subdivisions of such Counties. The requisites of the petition, the order of the court, the order of the county judge, the election and all proceedings thereunder shall be the same as prescribed in Articles 6957 to 6971, inclusive, of the Revised Civil Statutes of Texas, 1925, Title 121, Chapter 6, and all provisions thereof, relative to stock running at large, the impounding thereof, and the penalty therefor shall be applicable to domestic turkeys running at large in the event any such subdivision of said Counties shall by election prohibit the running at large of domestic turkeys by a vote as in such Statutes provided; provided that the fees for impounding domestic turkeys shall be ten cents (10¢) per day for each domestic turkey so impounded. As amended Acts 1939, 46th Leg., Spec.L., p. 946, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act declared an emergency and provided that the Act should take effect from and after its passage.

### CHAPTER SEVEN—PROTECTION OF STOCK RAISERS

#### Art. 7005. [7305] [5043] Counties exempt

The Counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Bee, Bell, Bexar, Borden, Bowie, Bosque, Brooks, Brazoria, Brazos, Brewster, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dallas, Delta, Deaf Smith, Denton, DeWitt, Dickens, Dimmit, Donley, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jackson, Jack, Jasper, Jeff Davis, Jim Hogg, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kleberg, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Mason, Matagorda, Maverick, Medina, McLennan, Midland, Milam, Mills, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Rains,



For Annotations and Historical Notes, see *Vernon's Texas Annotated Statutes*

Randall, Reagan, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Patricio, Schleicher, Shelby, Smith, Shackelford, Somervell, Starr, Scurry, Stephens, Sterling, Tarrant, Terrell, Terry, Throckmorton, Titus, Tom Green, Trinity, Tyler, Uvalde, Upshur, Upton, Val Verde, Van Zandt, Victoria, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Williamson, Wilson, Wise, Winkler, Young, and Zapata are hereby exempted from the provisions of this Chapter, and from all laws regulating the inspection of hides and animals. [As amended Acts 1937, 45th Leg., p. 413, ch. 208, § 1.]

Amendment of 1937, effective 90 days after May 22, 1937, date of adjournment. Section 2 of the amendatory Act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 7008. Fees of inspector

Sec. 2. Provided this Act does not apply to the following Counties in Texas: Bowie, Marion, Morris, Titus, Cass, Brewster, Crockett, El Paso, Hudspeth, Culberson, Ward, Reeves, Winkler, Ector, Midland, Glasscock, Reagan, Upton, Crane, Real, Sutton, Edwards, Kinney, Val Verde, Terrell, Presidio, Jeff Davis, Pecos, Uvalde, Medina, Maverick, Taylor, Scurry, Eastland, Callahan, Throckmorton, Jones, Shackelford, Haskell, Stephens, Jefferson, Hardin, Liberty, Orange, Red River, Lamar, Delta, Hopkins, Franklin, Brazos, Robertson, Burleson, Lee, Washington, Bastrop, Kaufman, Henderson, Navarro, Freestone, Anderson, Bell, Erath, Bosque, Hamilton, Coryell, Galveston, Chambers, Matagorda, Wharton, Fort Bend, Travis, Williamson, San Saba, Llano, Lampasas, Burnet, Tarrant, Dallas, Hill, Ellis, Johnson, Hood, Somervell, Baylor, Wichita, Archer, Young, Clay, Hardeman, Foard, Knox, Wilbarger, Parker, Palo Pinto, Jack, Denton, Wise, Hunt, Collin, Rains, Rockwall, Harrison, Rusk, Gregg, Panola, Shelby, Bailey, Lamb, Hale, Floyd, Motley, Cottle, King, Dickens, Lubbock, Hockley, Yoakum, Terry, Lynn, Kent, Stonewall, Crosby, Borden, Dawson, Gaines, Andrews, Howard, Martin, Cochran, Leon, Montgomery, San Jacinto, Pope, Grimes, Houston, Trinity, Walker, Van Zandt, Smith, Wood, Upshur, Camp, Fayette, Lavaca, Colorado, Austin, Waller, Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Oldham, Hutchinson, Lipscomb, Moore, Ochiltree, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Atascosa, Goliad, Live Oak, Refugio, Bee, Karnes, Aransas, DeWitt, San Patricio, Wilson, Victoria, Jackson, Calhoun, Sabine, Tyler, Cherokee, Jasper, Newton, Nacogdoches, San Augustine, Angelina, Cooke, Grayson, Fannin, Bexar, Kerr, Kendall, Bandera, Blanco, Hays, Comal, Caldwell, Guadalupe, Gonzales, Falls, Limestone, McLennan, Milam, Harris, Comanche, Mills, Brown, Coleman, McCulloch, Mason, Menard, Coke, Concho, Runnels, Tom Green, Irion, Schleicher, Sterling, Gillespie, and Kimble. [As amended Acts 1937, 45th Leg., p. 807, ch. 398, § 1.]

Amendment of 1937, effective May 22, 1937. declared an emergency and provided that the act should take effect from and after its passage.

Section 2 of the amendatory Act of 1937

its passage.

### CHAPTER EIGHT—LIVE STOCK SANITARY COMMISSION

#### Art. 7009. [7312-13] Commission

The Governor shall within thirty (30) days after this Act becomes effective by, and with the advice and consent of the Senate appoint three (3) citizens of the State, as a Live Stock Sanitary Commission of the State of Texas. The Governor shall designate one such member as a Chairman. Each Commissioner shall give a bond payable to the State

of Texas in the sum of Ten Thousand Dollars (\$10,000) to be approved by the Comptroller. Each Commissioner shall be a bona fide resident of and a practical live stock raiser in the community from which he may be appointed, and shall have been actively engaged in said business for at least five (5) years next preceding the date of his appointment. One of said Commissioners shall be appointed from the West, one from the South, and one from the Eastern portion of Texas. The word "Commission" as used in this Chapter shall mean the Live Stock Sanitary Commission of the State of Texas. That beginning with the appointment of said Commissioners, the term of office of the members of the Commission shall be for a period of six (6) years, except that those first appointed shall be appointed for two (2), four (4), and six (6) years, and that they shall serve until their successors have been appointed and have duly qualified. All vacancies which shall occur in the Commission for any reason shall be filled in the same manner as hereinbefore provided and shall be for the unexpired term. [As amended Acts 1937, 45th Leg., p. 253, ch. 131, § 1.]

Amendment of 1937, effective April 9, 1937.

declared an emergency making the act effective on and after its passage.

Section 2 of the amendatory act of 1937

## TITLE 122—TAXATION

### CHAPTER ONE—LEVY OF TAXES AND OCCUPATION TAXES

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| <p>Art.<br/>7047a—2. Tax on coin operated machines; definitions [New].<br/>7047a—3. Amount of tax [New].<br/>7047a—4. Exemptions from tax [New].<br/>7047a—5. Public nuisance [New].<br/>7047a—6. Injunction; venue; payment of tax as condition precedent; records [New].<br/>7047a—7. Serial number; stamping on machine; penalty [New].<br/>7047a—8. Rules and regulations; forfeitures of licenses or permits [New].<br/>7047a—9. Licenses or permits; collection of tax; payment of expenses [New].<br/>7047a—10. Existing laws; violations not authorized [New].<br/>7047a—11. Records; forfeiture of licenses [New].<br/>7047a—12. Violations of act; penalty; suit to recover penalty [New].<br/>7047a—13. Offenses; penalty [New].<br/>7047a—14. Sealing machine to prevent operation; penalty for breaking seal [New].<br/>7047a—15. Apportionment of tax; tax levy by counties and cities [New].</p> | <p>Art.<br/>7047a—16. Taxes, penalties and interest under re-enacted or repealed statutes [New].<br/>7047a—17. Partial invalidity [New].<br/>7047a—18. Apportionment of tax [New].<br/>7047a—19. Admission taxes; reports; apportionment [New].<br/>7047c—2. Supervisor of printing and manufacturing of cigarette tax stamps; designation by Director of Cigarette Tax Division; expenditures for designing and manufacturing of stamps, etchings, dyes, etc. [New].<br/>7047e. Stamp tax on secured notes and obligations [New].<br/>7047f. Tax on prizes offered by amusement or business enterprises [New].<br/>7047g. Tax on ores, marble and cinnabar ore [New].<br/>7047h. Allocation of revenues [New].<br/>7047i. Partial invalidity [New].<br/>7047j. Injunctions against collection of excise, occupation, and certain other taxes, fees, and penalties [New].<br/>7057d. Discount for taxes paid in advance [New].</p> |
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#### Art. 7043. 7351 Ascertaining tax rate

Within five (5) days after the Comptroller has received such certified statements from every Assessor within this State, said Board shall meet for the purpose of calculating the ad valorem rate of taxes to be collected for the State and public free school purposes. In calculating said rates the Board shall calculate the same by the following rules and upon the following basis: They shall find, by adding together all the property subject to taxation in all counties as shown by the certified statements returned by the Assessors, the total valuation of all property within this State subject to ad valorem taxes. They shall find, by adding together the sums appropriated by the Legislature, which will or which may become due by the State, during the following fiscal year, the amount fixed by the Board of Education for public free school purposes, as the State apportionment, the total sum of which will or which may become due by the State, during the following fiscal year. They shall find, by adding all sums paid into the State Treasury as delinquent ad valorem taxes and interest and penalties thereon during the first half of the current calendar year and latter half of the preceding calendar year and all sums which may be expected to be paid as taxes for State purposes from all sources other than ad valorem taxes, the total sum expected to be collected from all said sources. They shall find, by subtracting from the total sum which will or which may become due by the State during the succeeding fiscal year, the total sum which may be expected to be paid as taxes for State purposes from all sources other than current ad valorem taxes, the total sum for State purposes which must be collected by current ad valorem

taxes. They shall add to such remainder twenty (20%) per cent of said remainder. They shall divide the total sum for State purposes which must be collected by ad valorem taxes added to twenty (20%) per cent of such total sum by the quotient of the total valuation of all property within this State divided by one hundred (100). The quotient shall be the number of cents on the One Hundred (\$100.00) Dollars valuation to be collected for the current year for State purposes; provided that said quotient shall not be run to more than three decimals. The rate for State purposes shall never exceed the rate fixed by law on the One Hundred (\$100.00) Dollars valuation of property. In calculating the rate to be collected for public free school purposes, said Board shall take into consideration the number of children in the State within the scholastic age, to be determined from the most recent official school census; in arriving at the rate that shall be fixed for public free school purposes, said Board shall set the rate so that it will yield the amount per student that has been previously fixed by the Board of Education, provided the rate so fixed for any year shall not exceed the rate fixed by law. Provided that no rate for school purposes shall be set by said Board in excess of a rate required to produce sufficient funds when added to other available school funds would produce a total available school fund for an apportionment in excess of Twenty-two and 50/100 (\$22.50) Dollars, it being the intention of the Legislature that the State Board of Education shall have the authority to fix the apportionment at not exceeding Twenty-two and 50/100 (\$22.50) Dollars, and when so fixed, the State Tax Board shall fix a rate for school purposes, the maximum rate authorized by the Constitution if necessary, to produce revenue when added to other available school revenue, shall be a sufficient amount to meet the apportionment, which shall not be in excess of Twenty-two and 50/100 (\$22.50) Dollars, and it is specifically provided that the rate shall never be greater than necessary to supplement other available school funds to guarantee an apportionment of not exceeding Twenty-two and 50/100 (\$22.50) Dollars per year. As amended Acts 1939, 46th Leg., p. 625, § 1.

Art. 7047. 7355, 5049 Occupation taxes

(6) Auctioneers. From every Auctioneer, an annual tax of Twenty-five Dollars (\$25). As amended Acts 1939, 46th Leg., p. 627, § 1.

40A. Sulphur producers: Each person who owns, controls, manages, leases, or operates, any sulphur mine, or mines, wells or shafts, or who produces sulphur by any method, system, or manner within this State shall make quarterly on the first day of January, April, July and October of each year a report to the Comptroller sworn to by such person before an officer authorized to administer oaths in this State, or if such person be other than an individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding; and at the time of making said report shall pay to the Treasurer of this State as occupation tax for the quarter ending on said date an amount equal to One Dollar and Three Cents (\$1.03) per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter. Should any person subject to the occupation tax herein levied begin business after the beginning of a quarter, the amount of tax which such person or concern shall pay for the first quarter immediately succeeding the quarter in which the business was begun shall be ascertained by taking the total number of tons produced within the last quarter, dividing the same by the number of days such person or concern was engaged

in the business during said preceding quarter and multiplying the quotient by ninety, and multiplying the product by One Dollar and Three Cents (\$1.03). Said tax shall be in lieu of the tax imposed by House Bill No. 251, Chapter 212, Acts of the Regular Session of the Forty-second Legislature,<sup>1</sup> but said tax shall be paid in the same manner, subject to the same penalties, and under the same conditions as provided in said Act, except that fifty-five cents (55¢) of said funds shall go into the Available School Fund and the remainder to the General Fund. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 6.

<sup>1</sup> Article 7047, subsec. 40A.

45. (a) There is hereby levied an occupation tax on every person in this State manufacturing or producing carbon black; said tax to be one-twelfth of one cent ( $\frac{1}{12}$  of 1¢) per pound on all carbon black produced or manufactured where the market value is four cents (4¢) per pound or less and three per cent (3%) of the value of all carbon black produced or manufactured where the average market value is in excess of four cents (4¢) per pound. The market value of carbon black, as that term is herein used, shall be the actual market value thereof plus any bonus or premium or other thing of value paid therefor, or the actual value which carbon black does reasonably bring in the due course of trade.

(b) The tax herein imposed shall be due and payable at the office of the Comptroller at Austin on the twenty-fifth day of each succeeding month, based on the business done the preceding calendar month, and on or before said date such manufacturer or producer shall make and deliver to the Comptroller a verified report showing all carbon black manufactured, produced and sold upon which a tax accrues, and such other information as the Comptroller may require.

(c) A complete record of the business done, together with any other information the Comptroller may require, shall be kept by such distributor; which said record shall be open to the Comptroller, Attorney General, Auditor and their representatives; the Comptroller shall adopt rules and regulations for the enforcement hereof.

(d) In the event any person engaged in the business of producing or manufacturing carbon black in this State shall become delinquent in the payment of taxes herein imposed, the Attorney General may enjoin such person from producing or manufacturing carbon black until the delinquent tax is paid, and the venue of any such suit for injunction is hereby fixed in Travis County.

(e) If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25), nor more than One Thousand Dollars (\$1,000) for each violation and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly, he shall forfeit two per cent (2%) thereof as penalty, and after the first twenty (20) days he shall forfeit an additional eight per cent (8%). Delinquent taxes shall draw interest at the rate of eight per cent (8%) from due date. The State shall have a prior lien for all delinquent taxes, penalties and interest, on all property used by the producer or manufacturer in his business of manufacturing and producing carbon black.

(f) The term "carbon black" as herein used includes all black pigment produced in whole or in part from natural gas, casinghead gas or residue gas by the impinging of a flame upon a channel disk or plate, and the tax herein imposed shall reach all products produced in such manner. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 7.

Amendment of 1939 filed without Governor's signature April 17, 1939.

Section 2 of the amendatory act of 1939

declared an emergency and provided that the act should take effect from and after its passage.

Art. 7047a—1. Repealed by Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4

Art. 7047a—2. Tax on coin operated machines; definitions.

The following words, terms and phrases as used in this Act<sup>1</sup> are hereby defined as follows:

(a) The term "owner" as used herein shall mean and include any person, individual, firm, company, association or corporation owning or having the care, control, management or possession of any "coin-operated machine" in this State.

(b) The term "operator" as used herein shall mean and include any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in his or its place of business or upon premises under his or its control, any "coin-operated machine" in this State.

(c) The term "coin-operated machine" as used herein shall mean and include every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "merchandise or music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(d) The term "merchandise or music coin-operated machine" as used herein shall mean and include every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending merchandise, commodities, confections or music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: candy machines, gum machines, sandwich machines, handkerchief machines, sanitary drinking cups, phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend merchandise, commodities, confections or music.

(e) The term "skill or pleasure coin-operated machines" as used herein shall mean and include every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined herein. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(f) The term "service coin-operated machines" shall mean and include pay toilets, pay telephones and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4 (a-f).

<sup>1</sup> Articles 7047—2 to 7047—18.

## Art. 7047a—3. Amount of tax

Every "owner" as that term is hereinabove defined, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machines" as that term is defined herein, shall pay and there is hereby levied on every coin-operated machine as defined in this Act,<sup>1</sup> except such as are exempted herein, an annual occupation tax determined by the following schedule:

Series "1." (a) For each "merchandise or music coin-operated machine" as that term is hereinabove defined, a fee of Twenty Dollars (\$20), where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of five cents (5¢), or represents a value in excess of five cents (5¢).

And (b) a fee of Two Dollars and Fifty Cents (\$2.50) where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of one cent (1¢) and not exceeding five cents (5¢) or represents a value in excess of one cent (1¢) and not exceeding five cents (5¢).

Series "2." (a) For each "skill or pleasure coin-operated machine" as that term is hereinabove defined, a fee of Sixty Dollars (\$60) where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of five cents (5¢), or represents a value in excess of five cents (5¢).

And (b) a fee of Thirty Dollars (\$30) where the coin, fee or token used, or which may be used, in the operation thereof, is one of the value in excess of one cent (1¢) and not exceeding five cents (5¢) or represents a value in excess of one cent (1¢) and not exceeding five cents (5¢).

Provided that nothing herein shall prevent the "operator" of such machines from paying the tax levied in this Act for the account of the "owner" but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Act including the keeping of the records required herein. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 1.

<sup>1</sup> Articles 7047—2 to 7047—18.

## Art. 7047a—4. Exemptions from tax

Gas meters, pay telephones, pay toilets, and cigarette vending machines which are now subject to an occupation or gross receipts tax and "service coin-operated machines" as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Section.<sup>1</sup> Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 2.

<sup>1</sup> Articles 7047—2 to 7047—18.

## Art. 7047a—5. Public nuisance

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the Comptroller of Public Accounts, his agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 3.

Art. 7047a—6. Injunction; venue; payment of tax as condition precedent; records

(a) Any person who shall invoke the power and remedies of injunction against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin him from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a Court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(b) Before any restraining order or injunction shall be granted against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the Comptroller of Public Accounts of this State or their authorized representatives, a well bound book record, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such book record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the Comptroller of Public Accounts daily, excluding Sundays and legal holidays, a report on a form to be prescribed by said Comptroller, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the Court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The Comptroller of Public Accounts of this State, or his authorized representatives, may file in the Court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Act or has violated the same. Upon the filing of said affidavit, the Clerk of said Court shall issue notice to the said applicant to appear before such Court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the Court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the Sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed all taxes, fees and assessments, paid into the suspense account of the Treasurer under the provisions of this Act shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of



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such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the Comptroller of Public Accounts, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the Comptroller of Public Accounts all taxes, fees, and assessments due by him under the provisions of this Act and said restraining order or injunction shall, in no way, interfere with or impair the power of the Comptroller of Public Accounts of this State to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as herein before provided. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 4.

#### Art. 7047a—7. Serial number; stamping on machine; penalty

(a) For the purpose of enabling the Comptroller to determine the tax liability of the owners or operators of coin-operated vending machines in this State, or whether a tax liability has incurred, every individual, company, corporation, and/or association who owns, operates or displays any coin-operated machine in this State shall have a separate and different serial number stamped by indenture into the stationary wood or metal of each machine in a manner that such serial number cannot be removed or transferred to another machine, and such serial number shall be shown on the application for a license or permit and on the license or permit issued. If any person shall indent the same serial number on more than one machine or shall exhibit, display or have in his possession within this State any coin-operated machine with the license or permit of the Comptroller attached thereto and bearing the wrong serial number or a license or permit bearing a different serial number from the serial number stamped by indenture on said machines, he shall be guilty of a misdemeanor and punished as set out in Subsection 11 of this Section. The possession, exhibition or display of more than one machine bearing the same serial number operated under the same management or ownership, shall be prima facie evidence that the owner of such machines indented the same serial number on each machine for the purpose of evading payment of the tax levied herein.

(b) Provided further, the license or permit issued by the Comptroller to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 5.

#### Art. 7047a—8. Rules and regulations; forfeitures of licenses or permits

(a) The Comptroller of Public Accounts shall have the authority to make and publish rules and regulations, not inconsistent with this Act<sup>1</sup> or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Act and the collection of the revenues hereunder.

(b) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Act or any rule and regulation promulgated hereunder, the Comptroller of Public Accounts shall have the power and authority to forfeit all licenses or permits issued to any of the foregoing persons by giving written notice, stating the reason justifying such forfeiture and the same shall be forfeited five (5) days from date of such notice. No new licenses or permits shall be issued within a period of one (1) year to anyone whose licenses or permits have been forfeited, except at the discretion of the Comptroller of Public Accounts. If the licenses or permits of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is forfeited, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses or permits are reinstated or until new licenses or permits are granted. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 6.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

#### Art. 7047a—9. Licenses or permits; collection of tax; payment of expenses

The Comptroller of Public Accounts of this State is hereby authorized, ordered and directed to collect, and issue licenses or permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Act.<sup>1</sup> Provided, however, that where the tax, as now levied under the provisions of Chapter 116, Acts of the First Called Session of the Forty-third Legislature as amended by Chapter 354, Acts of the Regular Session of the Forty-fourth Legislature,<sup>2</sup> upon coin-operated vending machines, has been paid at the time of the taking effect of this Act, then, and in that event, the said Comptroller of Public Accounts is authorized and empowered to make proper adjustment thereof, by crediting pro rata, upon the annual basis, any unearned tax, to the payment of the tax hereby levied. Provided further, that Ten Thousand Dollars (\$10,000) of the funds derived under the provisions of this Act shall be set aside annually in a special fund subject to the use of the Comptroller and so much of said fund as may be necessary shall be expended for the printing of applications, licenses and permits and for the administration and enforcement of the provisions of this Act and so much of the proceeds of said fund shall be and the same is hereby appropriated for said purposes, same to be paid as needed; any unexpended portion of said fund so specified shall at the end of the biennium be paid in the proper proportion to the funds to which the tax levied herein is apportioned. Provided, however, that any salaries so here authorized to be paid shall not exceed in any particular the amount specified in the general appropriation bill passed at the Forty-fourth Legislature, Regular Session, for the same, similar or like services. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 7.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

<sup>2</sup> Article 7047a—1.

#### Art. 7047a—10. Existing laws; violations not authorized

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 8.

**Art. 7047a—11. Records; forfeiture of licenses**

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and Comptroller of Public Accounts of this State, or their authorized representatives, a complete book record in a well bound book of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The make, kind and serial number of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine by serial number, including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator together with the serial numbers of the machines operated by such operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine. The Comptroller of Public Accounts shall be authorized and it shall be his duty to forfeit all licenses, permits of every owner failing to keep such records or failing to present such records for inspection at any time upon demand by said Comptroller of Public Accounts or his authorized representatives. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 9.

**Art. 7047a—12. Violations of act; penalty; suit to recover penalty**

If any "owner" of a coin-operated machine within this State shall (a) deliver to or permit to be delivered to any "operator" a coin-operated machine without a valid license or permit issued by the Comptroller of Public Accounts of this State being attached thereto, or (b) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said license or permit being attached thereto, or (c) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (d) shall exhibit, display or have in his possession in this State any coin-operated machine without a serial number stamped by indenture into the wood or metal of said coin-operated machine, or (e) if any person shall exhibit, display or possess any coin-operated machine in this State with a license or permit attached thereto and bearing a different serial number from the serial number stamped by indenture on the machine to which said permit is attached, or (f) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (g) shall fail to keep such records, or (h) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (i) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Act,<sup>1</sup> or (j) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Act, or (k) if any person in this State shall fail to comply with the provisions of this Act, or violate the same, or (l) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred

Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a Court of competent jurisdiction in Travis County, Texas, or any Court having jurisdiction. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 10.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

#### Art. 7047a—13. Offenses; penalty

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (b) shall exhibit, display or have in his possession in this State any coin-operated machine without a serial number stamped by indenture into the wood or metal of said coin-operated machine, or (c) if any person shall exhibit, display or possess any coin-operated machine in this State with a license or permit attached thereto bearing a different serial number from the serial number stamped by indenture on the machine to which said permit is attached, or (d) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (e) shall fail to keep such records, or (f) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (g) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Act,<sup>1</sup> or (h) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Act, or (i) if any person in this State shall fail to comply with the provisions of this Act, or violate the same, or (j) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 11.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

#### Art. 7047a—14. Sealing machine to prevent operations; penalty for breaking seal

Provided that the Comptroller of Public Accounts, or his authorized representatives, in lieu of seizing any coin-operated machine upon which the tax has not been paid as provided in Subsection (3) herein, may seal such machine in a manner that will prevent further operation. Whoever shall break the seal affixed by said Comptroller or his authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken, or shall permit to be exhibited or displayed in his place of business any coin-operated machine after said seal has been broken shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Subsection 11 of this Section.<sup>1</sup> Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 12.

<sup>1</sup> Article 7047a—13.

#### Art. 7047a—15. Apportionment of tax; tax levy by counties and cities

Except as herein provided in this Act,<sup>1</sup> one-fourth ( $\frac{1}{4}$ ) of the net revenue derived from this Section shall be credited to the Available School Fund of the State of Texas and three-fourths ( $\frac{3}{4}$ ) of the net revenue derived from this Section shall be credited to the Old Age

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Assistance Fund of this State. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one-half ( $\frac{1}{2}$ ) of the State tax levied herein. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 13.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

#### Art. 7047a—16. Taxes, penalties and interest under re-enacted or repealed statutes

That all occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the reenacted or repealed provisions as set out in this Act<sup>1</sup> before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Act shall not affect offenses committed, or prosecutions begun, under any preexisting law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 14.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

#### Art. 7047a—17. Partial invalidity

If any section, subdivision, paragraph, sentence, clause or word of this Act<sup>1</sup> be held invalid or unconstitutional, the remaining portions of same shall, nevertheless, be valid; and it is declared that such remaining portions would have been enacted, notwithstanding such unconstitutional portion thereof. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 15.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

Subsection 16 of section 4 of article 3 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, repealed Acts 1933, 43rd Leg., 1st C.S., p. 320, ch. 116, as amended by Acts 1935, 44th Leg., p. 905, ch. 354, and further repealed "all laws and parts of laws that conflict herewith."

#### Art. 7047a—18. Apportionment of tax

The revenues derived under and by virtue of the tax levied in this Section<sup>1</sup> shall be credited one-fourth ( $\frac{1}{4}$ ) to the Available School Fund and three-fourths ( $\frac{3}{4}$ ) to the Texas Old Age Assistance Fund, credited by the Treasurer. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 17.

<sup>1</sup> Articles 7047a—2 to 7047a—18.

#### Art. 7047a—19. Admission taxes; reports; apportionment

Every person, firm, association of persons, or corporation owning or operating any place of amusement which charges a price or fee for admission, including exhibitions in theaters, motion picture theaters, opera halls, and including horse racing, dog racing, motorcycle racing, automobile racing, and like contests and exhibitions, and including dance halls, night clubs, skating rinks, and any and all other places of amusements not prohibited by law, shall file with the State Comptroller a quarterly report on the 25th day of January, April, July, and October for the

quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, no tax shall be levied under this Act on any admission collected for dances, moving pictures, operas, plays, and musical entertainments, all the proceeds of which inure exclusively to the benefit of State, religious, educational, or charitable institutions, societies, or organizations,—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual; and provided further, that theaters, motion picture theaters, operas, plays, and other like amusements where the admission charge is less than fifty-one (51) cents per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Section. Said person, firm, association of persons, or corporations, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as follows:

1. A tax of one cent on each ten (10) cents or each fractional part thereof paid as admission to theaters, motion picture theaters, operas, plays, and like amusements where the admission charged is in excess of fifty-one (51) cents per person.

2. A tax of one cent on each ten (10) cents or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, and like mechanical or animal contests and exhibitions. This Subsection shall be effective on December 1, 1936.

3. A tax of one cent on each ten (10) cents or a fractional part thereof paid as admission to dance halls, night clubs, skating rinks, and any and all other like places of amusements, contests, and exhibitions where the admission charge is in excess of fifty-one (51) cents.

4. On the amounts paid for admission by season ticket, subscription, or lease for admission to any place of amusement, a tax equivalent to ten (10) per centum of the amount paid therefor, provided a single admission to the place of amusement would be subject to taxation under the foregoing provisions.

5. On all passes or complimentary tickets to any place of amusement where a tax on admission is levied under this Section of this Act a tax equivalent to one cent on each ten (10) cents or each fractional part thereof charged as admission where the admission charge to such place of amusement is in excess of fifty-one (51) cents per person.

6. All the revenues derived under and by virtue of this Section shall be credited by the Treasurer, one-fourth to the Available School Fund, and three-fourths to the Texas Old Age Assistance Fund. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 6, as amended Acts 1937, 45th Leg., p. 311, ch. 161, § 1.

Section 2 of the amendatory Act of 1937 declared an emergency making the act effective on and after its passage.

#### Art. 7047b. Tax on producers of natural gas; definitions; reports to Comptroller

##### Payment and rate of tax

Sec. 3. A tax shall be paid by each such producer on the amount of gas produced and saved within this State, and on gas imported into the State, upon the first sale thereof in intrastate commerce upon the following basis:

A tax equivalent to three per cent (3%) of the market value of the total amount of gas produced and saved within this State, or sold, if imported into this State, at the actual market value thereof, as and when

produced. Provided, however, that if any gas is imported into this State from another State, in which latter State a severance, occupation or excise tax is imposed, the person importing such gas shall not be required to pay another tax thereon under the provisions of this Act.

The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of such producer to keep accurate records of all gas produced, making monthly reports under oath as hereinafter provided.

The purchaser of gas shall pay the tax on all gas purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasury.

Provided, that if gas produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said gas were sold.

The tax herein levied shall be paid monthly on the twenty-fifth day of each month on all gas produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid; and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein, the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorney fees and court costs incurred by such legal action. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 8.

**Penalty for failure to pay tax; liens; suits to collect tax, penalty, or interest; reports; transfers.**

Sec. 5.

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(e) If any producer or purchaser of natural and/or casinghead gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Act and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of natural and/or casinghead gas produced and the value thereof on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further, that such report or audit may be admitted in evidence only against the party by or for whom it was made.

In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736,

Revised Civil Statutes of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder. As added Acts 1939, 46th Leg., p. 628, § 1.

(f.) On notice from the State Comptroller, it shall be unlawful for any person to remove any natural and/or casing-head gas from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Act. As added Acts 1939, 46th Leg., p. 629, § 1.

(g.) Whenever any lease producing natural and/or casing-head gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Act. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver formerly owning and/or operating said lease. As added Acts 1939, 46th Leg., p. 629, § 1.

Section 2 of the amendatory acts of 1939 the act should take effect from and after declared an emergency and provided that its passage.

#### Art. 7047c—1. Cigarette Tax; definitions

Section 1. The following words, terms and phrases, as used in this Act are hereby defined as follows:

(a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars.

(b) "Individual Package of Cigarettes" shall mean and include the smallest package of cigarettes ordinarily sold at retail and shall include any and every package of cigarettes upon which a Federal stamp or token is required, evidencing the payment of Federal tax.

(c) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver.

(d) "Place of Business" is construed to mean and include any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption; or if sold from any vehicle, train, or cigarette vending machine, the vehicle, train, or cigarette vending machine on which or from which such cigarettes are sold shall constitute a place of business.

(e) "Stamp" shall mean the stamp or stamps printed, manufactured or made by authority of the Board as hereinafter defined, and issued, sold or circulated by the Treasurer and by the use of which the tax levied hereunder is paid.

(f) "Counterfeit Stamp" shall mean any stamp, label, print, tag or token which evidences, or purports to evidence, the payment of any tax levied by this Act, and which stamp, label, print, tag or token has not



been printed, manufactured or made by authority of the Board as hereinafter defined and/or issued, sold or circulated by the Treasurer.

(g) "Previously Used Stamp" shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

(h) "First Sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this State.

(i) "Drop-shipment" shall mean and include any delivery of cigarettes received by any person within this State when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

(j) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas or his duly authorized assistants and employees.

(k) "Treasurer" shall mean the State Treasurer of Texas or his duly authorized assistants and employees.

(l) "Attorney General" shall mean the Attorney General of the State of Texas or his duly authorized assistants and employees.

(m) "Distributor" shall mean and include every person in this State who manufactures or produces cigarettes or who ships, transports, or imports into this State or in any manner acquires or possesses cigarettes and makes a "first sale" of the same in this State; the said term shall also include every person in this State who in any manner acquires or possesses unstamped cigarettes for the purpose of making a "first sale" of the same within this State.

(n) "Wholesale Dealer" shall mean and include every "person" other than a distributor or a salesman in the employ of a manufacturer and handling only the products of his employer who engages in the business of selling or distributing cigarettes in this State for the purpose of resale.

(o) "Retail Dealer" shall mean and include every person other than a distributor or wholesale dealer who shall sell, distribute, or offer for sale or distribution or possess for the purpose of sale or distribution, cigarettes irrespective of quantity or amount or the number of sales or distributions; and it shall also mean and include every person other than a distributor or wholesale dealer who distributes or disposes of cigarettes in unbroken individual packages or in quantities of ten (10) or more as gifts or prizes or in any other manner of distribution or disposal where no sale is involved.

(p) "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers and retail dealers. As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 2.

#### Cigarette stamp tax board; sale of stamps

Sec. 3. A "Cigarette Tax Stamp Board" composed of the Board of Control of this State, designated hereafter as the "Board", is hereby created and the said Board shall be and is hereby required to design and have printed or manufactured new cigarette tax stamps of such size and denominations and in such quantities as may be determined by the said Board. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes; provided that a different and separate serial number or combination letter and

number may be assigned to and printed on the margin of each sheet of stamps, or other methods of identification be adopted as the Board may decide. The printing or manufacturing of the stamps shall be awarded by competitive bid and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the State in the enforcement of the provisions of this Act.

The Board, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit in the State at a discount of four per cent (4%) from the face value; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller, setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provided further, that every distributor shall cause to be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equalling the tax due thereon, before any such distributor sells, offers for sale, or consumes, or otherwise distributes or transports the same.

From the effective date of this Act, one-third of the net revenue derived from the Act levying the Cigarette Tax shall be credited to the Available School Fund of the State of Texas, and two-thirds shall be credited to the Texas Old Age Assistance Fund.

The Board is hereby authorized to change the design of the stamps as often as it may deem such change necessary to the best enforcement of the provisions of this Act, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided that whenever a change is made in the design of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of any new design; provided, it shall be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old design are affixed after sixty (60) days from the date of issue of a new design; provided, further, that after sixty (60) days from the date of issue of any new design of stamps the old design shall be void and cigarettes with stamps of the old design affixed to the individual package shall, for the purpose of the enforcement of the provisions of this Act, be considered as cigarettes without stamps affixed thereto. It shall be the duty of the Treasurer upon receipt of any new design of stamps authorized to be printed by the Board to designate the date of issue of such new design by the issuance of a proclamation and the date of such proclamation shall be the date of issue of the new design of stamps.

Any person who shall have in his possession any cigarette tax stamps of an old design after sixty (60) days from the date of issue of a new

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design of stamps shall be guilty of a felony and shall be punished as set out in Section 26<sup>1</sup> of this Act.

Provided that any cigarette tax stamps may be exchanged only when proof satisfactory to said Treasurer is furnished that any stamps offered to said Treasurer in exchange were properly purchased and paid for by the person offering to exchange such stamps; provided, further, that stamps which are effaced or mutilated in any manner may be refused for acceptance in exchange by said Treasurer.

The Treasurer shall keep a record of all stamps sold by him or under his direction, of all stamps exchanged by him and of all refunds made on stamps purchased.

Orders for cigarette tax stamps shall be sent direct to the Treasurer and it shall be the duty of the Treasurer to invoice the stamps ordered to the purchaser upon a form invoice to be prescribed by the Treasurer, which invoice shall be issued in triplicate and numbered consecutively. The invoice shall show the date of sale, the name and address of purchaser, the number of stamps and their serial numbers, the denomination and value of stamps so purchased. The invoice shall be signed by the Treasurer and the original sent with stamps to the purchaser; the duplicate of the invoice shall be sent to the Comptroller and the triplicate kept by the Treasurer; provided, further, that the purchaser of said stamps shall hold the said invoice for a period of two (2) years for inspection at all times by the Comptroller and the Attorney General. No stamp affixed to a package of cigarettes shall be cancelled by any letter, numeral or any other mark of identification or otherwise mutilated in any manner that will prevent or hinder the Comptroller in making an examination as to the genuineness of said stamp.

Stamps in unbroken sheets of one hundred (100) stamps may be exchanged, with the Treasurer only, for stamps of a different denomination. Provided, further, that the Treasurer shall be authorized to make refunds on unused stamps in unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund. Such refund shall be made from revenue derived from this Act before such revenue is allocated as herein provided. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 1; Acts 1937, 45th Leg., p. 621, ch. 310, § 3.

<sup>1</sup> Penal Code, art. 131c—1, § 26.

**Order by distributor for stamps shipped with draft attached**

Sec. 3B. A distributor may order stamps shipped with draft attached to the bank with which said distributor regularly transacts business. The Treasurer is hereby authorized to ship stamps in compliance with such orders to any such bank authorized to do business in Texas under the laws of this State and the United States. Such stamps, together with the invoice required under Section 3 of the Cigarette Tax Law, shall be attached to a form draft to be prescribed by the State Auditor, which draft shall show the date of shipment, the name and address of the bank, the name of the distributor and the amount of said draft. If said draft is not paid within twenty (20) days of the date thereon, it shall be returned together with the stamps attached to the Treasurer. Any distributor failing to take up such draft and stamps as ordered by him shall be notified at the end of such twenty (20) day period by the Treasurer to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is

hereby authorized to discontinue the shipment of stamps with draft attached as herein provided. As added Acts 1937, 45th Leg., p. 621, ch. 310, § 4.

#### Permits to distributors

Sec. 4. Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of cigarettes upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a cigarette permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five (\$25.00) Dollars if for a distributor's permit, or a fee of Fifteen (\$15.00) Dollars if for a wholesale dealer's permit, or a fee of Five (\$5.00) Dollars if for a retail dealer's permit. Said applications shall be on forms prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set forth: (a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer; (b) the principal office, residence and place of business in Texas for which the permit is to apply; (c) and if other than an individual, the principal officers or members thereof not to exceed three (3), and their addresses. The Comptroller may require any other information as he may desire in said application. No distributor, wholesale dealer or retail dealer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire twelve (12) months from the date the distributor, wholesale dealer or retail dealer first sells cigarettes or engages in the business of selling cigarettes or from the expiration date of the permit previously issued to said distributor, wholesale dealer or retail dealer, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that any distributor manufacturing, importing, or acquiring in any other manner, cigarettes for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor; provided, further, that the Treasurer shall be authorized to sell stamps to such distributors acquiring cigarettes for their own personal use or consumption and not for sale or other disposal, in lesser quantities than unbroken sheets of one hundred (100) stamps.

Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a non-assignable consecutively numbered permit, designating the kind of permit and authorizing the sale of cigarettes in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation of any provision of this Act or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any cigarettes from such place of business until a new permit is granted or the suspension of the old permit removed. Provided, that the Treasurer may refuse to sell stamps to any person who has not obtained a permit to engage in business as a distributor or to any distributor whose permit has been re-

voiced or suspended until such permit has been re-instated or a new permit issued.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, that any distributor, wholesale dealer, or retail dealer who is the legal owner and holder and is operating under any unexpired permit which has been issued by the Comptroller as provided by Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, shall not be required to make application for and obtain from the Comptroller a permit as required herein prior to the expiration of the twelve (12) months for which such permit was issued. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells cigarettes at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion thereof only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell cigarettes from or by means of a cigarette vending machine, train, automobile or other vehicle, the serial number of said vending machine, the make, motor number and State highway license number of said automobile or other vehicle and the name of the railway company and number of said train shall be shown on the applications. As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 5.

**Time for affixing stamps; possession of unstamped cigarettes prima facie evidence of violation of Act**

Sec. 5. Every person, other than a distributing agent, bonded distributor or common carrier shall before receiving or accepting delivery of any cigarettes without stamps affixed to evidence the payment of the tax, obtain from the Treasurer the requisite amount or number of stamps necessary to stamp such cigarettes and the possession of any unstamped cigarettes without the possession of the requisite amount or number of stamps shall be prima facie evidence that said cigarettes are possessed for the purpose of making a "first sale" thereof without stamps and without payment of the tax levied herein.

Every distributor in this State shall cause all cigarettes received by him to have the requisite denominations and amount of stamps affixed to represent the tax as levied herein; provided, however, that any distributor who has obtained from the Treasurer and has in his possession the requisite amount and number of stamps necessary to stamp all cigarettes received by him may hold such cigarettes for a period of not longer than forty-eight (48) hours, excluding Sundays and legal holidays, before affixing the stamps as required herein. As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 6.

**Bond of interstate dealers**

Sec. 6. Any distributor or other person engaged in interstate business who shall, within thirty (30) days from the date this law becomes effective, execute and file with the Comptroller a good and sufficient surety bond signed by the distributor or other person and a good and sufficient surety company or companies authorized to do business in this State shall be permitted to set aside such part of his stock of cigarettes as may be necessary for the conduct of such interstate business

without affixing the stamps required by this Act. Provided, that such bond shall be approved by and acceptable to the Comptroller in an amount of not less than Two Hundred Fifty (\$250.00) Dollars and not more than double an amount necessary to stamp the largest quantity of cigarettes set aside at any time for the conduct of such business, and any quantity so set aside which is larger than that permitted in said bond shall be subject to the same requirements as cigarettes purchased or possessed for intrastate sale. Said interstate stock shall be kept in an entirely separate part of the building, separate and apart from stamped stock. The amount of the bond required of such distributor or other person shall be fixed by the Comptroller, and subject to the minimum limitation herein provided; additional bond or a new bond shall be required by the Comptroller at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond or new bond shall be supplied within ten (10) days after demand. Provided, that said bond or bonds shall be payable to the State of Texas in Austin, Travis County, Texas, and conditioned for the full, complete and faithful performance of all the conditions and requirements of this Act affecting said distributor or other person on a form to be prescribed by the Comptroller, with the approval of the Attorney General. Should the distributor or other person fail or refuse to supply a new bond or additional bond within ten (10) days after demand, the Comptroller shall have the power and authority to cancel forthwith any existing bond made and executed by and for said distributor or other person. In the event said bond is cancelled, said distributor or other person shall within forty-eight (48) hours after said cancellation, excluding Sundays and legal holidays, cause any and all cigarettes received prior to said cancellation to have the requisite denomination and amount of stamps affixed to represent the tax as herein provided. Cigarettes set aside for interstate business which are not kept entirely separate and apart from intrastate stock shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale".

The Comptroller is hereby authorized to prescribe and promulgate rules and regulations not inconsistent with this Act or Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, for the purpose of regulating the sale of cigarettes for movement into States adjoining Texas when said cigarettes have the cigarette tax stamp of such adjoining State affixed thereto. As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 6.

**Record and report of purchases and sales**

Sec. 7. (a) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said cigarettes, and in addition thereto a book record in a well bound book which will provide complete information of all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said cigarettes were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open

*For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes*

mail if received by mail, the number and kind of cigarettes received with stamps affixed thereto, and, if a distributor, the number and kind of cigarettes received without the stamps affixed, and an inventory or inventories on the first of each month, showing the number and kind of cigarettes on hand with stamps affixed thereto, and, if a distributor, the number and kind without stamps affixed.

(b) Every distributor shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General the invoice of stamps purchased or received from the Treasurer and in addition thereto a book record in a well bound book which will provide complete information of all stamps purchased from the Treasurer and the disposition thereof. Such record shall show the date of receipt of stamps purchased, the number or quantity of stamps, the denomination, and amount paid for stamps so purchased. Such record shall also show the number or quantity, the denomination and face value of stamps sold by requisition from the Comptroller with the name of purchaser of said requisitioned stamps, the number or quantity, the denomination and face value of stamps sent to or received from the Treasurer as an exchange and the inventory or inventories of all stamps on hand on the first day of each month, said inventory to show the number or quantity, denomination and face value of said stamps.

(c) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of cigarettes, regardless of whether or not the tax is due upon said cigarettes under the provisions of this Act, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier; whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the number and kind of cigarettes sold, and if the sale is by a distributor the number and kind of cigarettes with the stamps affixed to each individual package, and the number and kind of cigarettes without the stamps affixed thereto, and in addition thereto the said invoices shall be supported by the receipts and other records furnished by the carrier of such cigarettes. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided, however, that when the cigarettes are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further, that where a distributor or wholesale dealer sells cigarettes at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for cigarettes to be sold at retail and such stock of cigarettes invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well bound book or books of all cigarettes sold, distributed or used by said distributor or wholesale dealer. Such book rec-

ord shall include all information required to be kept on the invoice aforesaid.

(d) Provided, that every person engaged in the business of selling cigarettes in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(e) Salesmen in the employ of a manufacturer, and handling only the products of his employer, who engage in the business of selling or distributing cigarettes with stamps affixed in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesmen shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said cigarettes.

(f) "Solicitors" engaged in the business of soliciting orders for cigarettes for shipment to points within this State shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for cigarettes for such shipments which record shall include the quantity and kind of cigarettes ordered or shipped, from whom ordered or by whom shipped, the full name and correct address of the purchaser, the date said cigarettes were ordered, and if available the date said cigarettes were shipped. Such record shall be kept for all cigarettes shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if said solicitor is given credit for or furnished records of such orders or such shipments. As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 6.

#### Cigarette solicitors; permit; penalty

Sec. 8a. No individual shall offer for sale or solicit any order in this State for the sale of any cigarettes for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permittee to solicit orders for the sale of cigarettes and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar (\$1) per year or part thereof, and the permit shall be issued for the calendar year, beginning January 1, 1937, at which time this Section of this Act shall become effective. Such permittee shall, on the fifth day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for cigarettes, said copies to show the quantity and kind of cigarettes ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said cigarettes were ordered and any other information which may be required by the Comptroller; and the failure of such permittee to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one (1) year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

If any person shall offer for sale or solicit any order in this State for the sale of cigarettes for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-Five Dollars (\$25) nor more than Two Hundred Dollars (\$200). Acts 1935, 44th Leg., p. 575, ch. 241, § 8a, as added by Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 1a.

**Report by distributors to Comptroller**

Sec. 9. (a) Every distributor shall make and deliver to the Comptroller in Austin, Travis County, Texas, on the 10th day of each month a report for the preceding calendar month, which report shall be properly sworn to and executed by the distributor, or his representative in charge, and which shall show the date said report was executed, the name and address of said distributor, the month which the report covers, the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month, the number of unstamped and the number of stamped cigarettes purchased and received during the month, the number of unstamped and the number of stamped cigarettes returned from customers or received from any other source, the number of unstamped and the number of stamped cigarettes sold, used, lost, stolen, returned to the factory or disposed of in any other manner, and the number of unstamped and the number of stamped cigarettes on hand at the end of the month. Said report shall show separately the number of cigarettes sold or distributed in intrastate commerce and the number sold or distributed in interstate commerce. Said report shall also show the number, denomination and face value of unused stamps on hand at the beginning of the month covered in the report, the number, denomination and face value of stamps purchased and received, the number, denomination and face value of stamps sold, used, lost, stolen, exchanged, returned to the Treasurer, or disposed of in any other manner and the number, denomination and face value of stamps on hand at the end of the month covered in the report. Provided, that said report shall also show separately all drop-shipments handled by or through said distributor during the period reported, which information shall include the date of shipment, the invoice number, the name and address of the consignee, the number and brand of such cigarettes and the means of delivery and a copy or copies of all invoices of such drop-shipments shall be attached to and sent with said report. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up in said report but the failure of any distributor to obtain such form from the Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein.

(b) If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed in the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the number of cigarettes sold by such distributor or his representatives, upon which such tax, penalty and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered cigarettes, whether from a transportation

company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(c) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing section, and attach or file as an exhibit any report or audit of said distributor, and an affidavit made by the Comptroller or his representatives that the taxes shown to be due by said report or audit are unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder. As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 7.

#### Carriers to permit access to records

Sec. 18. Every common and contract carrier transporting cigarettes in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all cigarettes so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the number or quantity of cigarettes transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of cigarettes shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all cigarettes in the custody of such carriers. As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 8.

In section 1, the amendatory act of 1937, cited to the text, added to paragraph "m" the provision following the semi-colon.

In section 3, the amendatory act of 1937 increased the discount specified in the second paragraph from 2½ per cent to 4 per cent, and added the proviso in that paragraph as to a distributor failing or refusing to comply with the law or violating the same.

In section 4, the amendatory act inserted the words "make the report required herein of a distributor and," near the end of the first paragraph, added the proviso at the end of the second paragraph, changed the provisions of the third paragraph concerning holders of unexpired permits, which previously referred to holders of unexpired dealer's permits under chapter 90 of the 43rd Legislature, and changed the provisions of the same article following "where such operation of said business is conducted" which previously provided that any unexpired wholesale dealer's permit might be returned to the Comptroller for credit on the unexpired portion thereof only upon the purchase of a distributor's

permit, and that a separate permit as a retail dealer should be required if any distributor or wholesale dealer sold cigarettes at retail.

Section 5 prior to the amendment required stamps to be affixed within 48 hours after receipt of unstamped cigarettes, and contained provisions as to bonds of distributors or persons engaged in interstate business.

Section 6 prior to the amendment, related to records and reports.

Section 7 prior to the amendment consisted of a provision similar to the first paragraph of section 5, as amended.

In section 9, the amendatory act made numerous changes in the first paragraph as to the contents of the report and added the last proviso in that paragraph.

Section 18 prior to amendment merely required common carriers in the state having custody of books or records showing the transportation of cigarettes both interstate and intrastate to give and permit the Comptroller free access to such books and records.

Art. 7047c—2. Supervisor of printing and manufacturing of cigarette tax stamps; designation by Director of Cigarette Tax Division; expenditures for designing and manufacturing of stamps, etchings, dies, etc.

That the Director of the Cigarette Tax Division of the State Comptroller's Department be authorized to designate to the Cigarette Tax Stamp Board a competent person who is experienced in printing, to personally represent him (the Director of the Cigarette Tax Division) in the printing and manufacturing of the cigarette tax stamp as the law provides in the second paragraph of Section 30 of the Cigarette Tax Law enacted at the Regular Session of the Forty-fourth Legislature;<sup>1</sup> the Cigarette Tax Stamp Board shall employ at once such competent person as has been designated by the Director of the Cigarette Tax Division of the State Comptroller's Department and shall continue such person in the employment of the Tax Stamp Board until such times as the Director of the Cigarette Tax Division shall designate some other person as his personal representative; and that the Tax Stamp Board shall issue a monthly voucher, not to exceed One Hundred and Seventy-five Dollars (\$175) per month, to be paid said designated representative out of the fund appropriated by the General Departmental Appropriation Bill at the Regular Session of the Forty-fifth Legislature to the State Treasurer to be expended by the Tax Stamp Board for the designing and manufacturing of cigarette tax stamps, etchings, dies, etc. Acts 1937, 45th Leg., 2nd C.S., p. 1995, ch. 67, § 1.

<sup>1</sup> Article 7047c—1, § 30.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act authorizing the Director of the Cigarette Tax Division of the State Comptroller's Department to designate a personal representative as supervisor of the printing and manufacturing of cigarette tax stamps; relieving the Director of the Cigarette Tax Division of the burdens of the personal supervision imposed by Section 30 of House Bill 755, Acts, Forty-fourth Legislature; authorizing the designation by the Director of the Cigarette Tax Division to the Stamp Tax Board of a personal representative of the Director; the employment of such representative by the Stamp Tax Board; and providing for the payment of services to be rendered by such personal representatives; and declaring an emergency. Acts 1937, 45th Leg., 2nd C.S., p. 1995, ch. 67.

The act of 1937, cited to the text, contained the following preamble:

"Whereas, The Cigarette Tax Law enacted at the Forty-fourth Legislature, with

amendments, provides, in Section 30 of said Act, that the Director of the Cigarette Tax Division of the State Comptroller's Department shall personally supervise the printing or manufacturing of all cigarette tax stamps under the contract as awarded by the State Board of Control, etc.; and,

"Whereas, It is impracticable for said Director to give his personal attention at all times to the printing and manufacturing of said tax stamps because of numerous other duties required of him in the enforcement of said Cigarette Tax Law; and

"Whereas, It is to the best interest of the State and will afford better protection to the State if a competent person experienced in printing is present at all times during the actual printing or manufacturing process of said stamps and that it will afford better protection to the State if such person is permanently employed to supervise and have charge of the stamps which have been printed, which at times reach a value of several hundred thousand dollars and which must be stored at the printing plant on account of lack of space in the Treasurer's vaults; therefore,"

**Art. 7047e. Stamp tax on secured notes and obligations**

(a) Except as herein otherwise provided there is hereby levied and assessed a tax of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or re-

corded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion that said property in Texas bears to the total value of the property securing the obligation; and, providing further that, except as to renewals or extensions of accrued interest, the provisions of this section shall not apply to instruments given in renewal or extensions of instruments theretofore stamped under the provisions of this Act or the one amended hereby, and shall not apply to instruments given in the refunding of existing bonds or obligations where the preceding instrument of security was stamped in accordance with this Act or the one amended hereby; provided further that the tax levied in this Act shall apply to only one instrument, the one of the greatest denomination, where several instruments are contemporaneously executed to secure one obligation; and provided further that when once stamped as provided herein, an instrument may be recorded in any number of counties in this State without again being so stamped. This section shall not apply to instruments, notes, or other obligations taken by or on behalf of the United States or of the State of Texas, or any corporate agency or instrumentality of the United States, or of the State of Texas in carrying out a governmental purpose as expressed in any Act of the Congress of the United States or of the Legislature of the State of Texas, nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products, or to livestock or farm implements, or an abstract of judgment.

If the amount secured by an instrument is not expressed therein, or if any part of the security described in any such instrument appears to be located without the State of Texas, the County Clerk shall require proof by written affidavits of such facts as may be necessary to determine the amount of the tax due.

(b) Payment of the tax as hereby levied shall be evidenced by affixing the stamps herein provided for, to all instruments included within the provisions of the Act, and it shall be the duty of the State Treasurer at all times to keep a supply of such stamps on hand for sale to any person upon demand and payment therefor, and the State Treasurer shall at the request of any County Clerk of the State of Texas consign said stamps to the different County Clerks. The stamps shall be of such design and denomination as to the State Treasurer shall seem proper, and shall show the amount of the tax the payment of which is evidenced thereby, and shall contain the words "Note Stamps". The County Clerks of Texas shall keep a supply of such stamps on hand in their office for sale to any person upon demand and payment therefor, and shall remit all moneys received from the sale of such stamps, except as hereinafter provided, to the State Treasurer at any time when requesting additional stamps from the State Treasurer; provided that if the County Clerk does not order additional stamps and remit said moneys on or before the 25th day of each month, he shall make remittance of any moneys on hand, except as hereinafter provided, from the sale of such stamps not later than the 25th day of each month, irrespective of whether or not such clerk

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orders additional stamps; provided further, that each County Clerk shall be entitled to retain as fees of office for handling said stamps, five (5%) per cent of the amount of money received from the sale of such stamps, provided such fee for any one calendar month shall not exceed One Hundred (\$100.00) Dollars, said five (5%) per cent to be retained by the County Clerk when remitting to the State Treasurer as above provided; providing further that the County Clerks shall be liable under their official bonds for the faithful performance of their duties and the remittance of moneys to the State Treasurer, from the sale of stamps as herein provided. The State Treasurer shall be responsible for the custody of said stamps and shall demand such receipt as he deems necessary for the County Clerks upon consignment of stamps to the County Clerks as herein provided, and said State Treasurer shall be liable for the proceeds received by him under his official bond. The State Treasurer shall from time to time deduct enough money from the proceeds received from the sale of stamps to pay for the printing of said stamps, and the mailing of said stamps to the County Clerks, said money to be deducted by the State Treasurer before allocating the funds received from the sale of said stamps. The State Treasurer shall assist the County Clerks of the State in determining what instruments are subject to the tax as provided in this Act. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 9, as amended Acts 1939, 46th Leg., p. 630, § 1.

Section 2 of the amendatory act of 1939 provided that "Should any portion, section, word or phrase of this Act be declared unconstitutional or invalid, such decision shall affect that section, word or phrase

only, and shall not render invalid any of the remaining portions of this Act."

Section 3 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 7047f. Tax on prizes offered by amusement or business enterprises

(a) Every person, firm, or corporation conducting a theatre, place of amusement, or any business enterprise in connection with the operation of which a prize in the form of money or something of value is offered or given to one or more patrons of such theatre, place of amusement, or business enterprise, and not given to all patrons thereof paying the same charge for any certain service, commodity, or entertainment, shall make a verified monthly report on the twenty-fifth day of each month to the Comptroller of Public Accounts of the State of Texas, showing the amount of money so given in prizes, and the value of all prizes or awards so given in connection with such business during the next preceding month.

(b) There is hereby levied a tax equal to twenty per cent (20%) of the value of all such money, prizes, and awards given in connection with the operation of each and all of the foregoing business enterprises, and at the time of making the report to the Comptroller of Public Accounts, the owner or operator of any such business shall pay to the State Treasurer such tax upon the total amount of money, prizes, and awards so given during the next preceding month. The tax herein levied shall be a joint liability of the owner and operator of such business, and, in the event any person engaged in any business operated in the manner hereinabove mentioned shall fail or refuse to pay said tax on or before the twenty-fifth day of each month, he shall forfeit to the State of Texas not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each violation, and each day's delinquency shall constitute a separate offense. The State of Texas shall have a prior lien for all delinquent taxes and penalties on all property used by the owner or operator of any such business, and the Attorney General of the State of Texas may file suit for the collection of such tax and penalties in

any District Court of Travis County, Texas, and for the foreclosure of such lien, and may enjoin the operation of any such business until such tax is paid.

(c) Any person managing or controlling any business enterprise required to file a report under paragraph one hereof, who shall fail or refuse to file such report on or before the twenty-fifth day of each month, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100), and such punishment shall be in addition to the civil penalties herein provided for.

(d) The provisions of this Section shall not apply to enterprises operating under Chapter 10 of the Acts of the Forty-third Legislature, First Called Session,<sup>1</sup> and all amendments thereto, and nothing in this Section contained shall be construed to legalize or authorize the operation of any contest, practice or device now prohibited by law. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 10.]

<sup>1</sup> Penal Code, art. 655a.

#### Art. 7047g. Tax on ores, marble and cinnabar ore

(a) There is hereby levied an occupation tax upon the commercial producers of the following natural resources engaged in producing and severing from the soil and/or waters the following natural resources: ores, marble, and cinnabar ore. The tax levied is predicated upon the quantity severed and produced and shall be paid at the following rates:

1. On ores, five cents (5¢) per ton of 2000 lbs.
2. On marble, ten cents (10¢) per ton of 2000 lbs.
3. On cinnabar ore, ten cents (10¢) per ton of 2000 lbs.

(b) The tax imposed under the provisions of this Section shall be the primary liability of any person, firm, association, company or corporation owning, controlling, managing or leasing any natural resources who produces in any manner any of the natural resources upon which a tax is imposed herein by taking such natural resources from the earth or waters of this State. The producer of any of the natural resources upon which a tax is imposed under the provisions of this Section shall make such tax payments to the Treasurer of this State, as provided for by the other provisions of this Act.

(c) Each person, firm, association, company, or corporation who produces the natural resources on which a tax is imposed under the provisions of this Section shall make quarterly on the first days of January, April, July and October of each year a report to the Comptroller, sworn to by such person, before an officer authorized to administer oaths in this State, or if such person be other than an individual, so sworn to by its president, secretary, or other duly authorized officer, on such forms as said Comptroller shall prescribe, showing the total quantity of natural resources produced by said producer during the quarter next preceding the date of the report, the county in which the natural resources are produced, the correct description of the properties from which the natural resources are produced, the correct name and address of the first purchaser of said natural resources, and the price received therefor, and such other information as the Comptroller may require, and at the time of making and filing said report, shall pay to the Treasurer of this State an occupation tax for the quarter ending on said date in amounts as imposed under the provisions of this Section.

(d) The term "commercial producer" is hereby defined as any person, firm, association, company or corporation which severs or produces

any ores, marble, or cinnabar ore in excess of one thousand (1,000) tons during any one calendar year.

(e) For the tax, penalties and interest herein provided for, the State shall have a prior and preferred lien on all such natural resources. Said lien shall extend to and be enforceable against any property, either real or personal or both, owned by any person or persons made liable for the taxes herein levied, which property is not exempt from forced sale by reason of existing law or the Constitution of this State.

The reports required to be filed herein shall be filed not later than twenty-five (25) days after the quarter for which the tax herein levied is payable. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 11.

#### Art. 7047h. Allocation of revenues

All revenues derived and collected under the provisions of this Act, except where otherwise specifically allocated, shall be deposited one-fourth ( $\frac{1}{4}$ ) to the credit of the Available School Fund, and the remainder to the credit of the General Revenue Fund of the State. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 12.

#### Art. 7047i. Partial invalidity

If any provision or section of this Act is held unconstitutional or invalid, the same shall not operate to defeat the whole Act, but all other parts shall stand and remain in full force and effect. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 5, § 1.

Section 2 of article 5 of Acts 1936, 44th emergency, making act effective from and Leg., 3rd C.S., p. 2040, ch. 495, declared an after its passage.

#### Art. 7047j. Injunctions against collection of excise, occupation, and certain other taxes, fees, and penalties

Section 1. Before any restraining order or injunction shall be granted in this State to restrain or enjoin the collection of any excise tax, occupation tax, sales tax, severance tax, gross receipts tax, license or permit tax, and registration or filing fee or any statutory penalties assessed for failure to pay any of such taxes and before any restraining order or injunction shall be granted against any State official or his authorized representatives in this State to restrain or enjoin the collection of any of the foregoing taxes, fees and penalties, the applicant therefor shall pay into the suspense account of the State Treasurer all taxes, fees and penalties then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent or attorney. Provided, however, that unless otherwise provided by statute, said applicant may, in lieu of paying such taxes, fees and penalties into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient bond to guarantee the payment of such taxes, fees and penalties in an amount equal to twice the amount of all taxes, fees and penalties then due and which may reasonably be expected to become due during the pendency of said injunction. The amount of such bond and the sureties thereon shall be approved by and acceptable to the judge of the court granting said injunction and the Attorney General of this State and the application for said restraining order or injunction shall reflect under oath of the applicant, his agent or attorney, that said bond has been approved and filed as aforesaid. Whenever it appears to the Attorney General that any such bond has become insufficient to cover double the amount of the taxes, fees and penalties accruing subsequent to the granting of said injunction, the said

Attorney General shall demand of said applicant that additional bond be filed. Provided, further, that said applicant shall keep during the pendency of the injunction and for a period of one (1) year thereafter open to the inspection at all times of the Attorney General of this State and all other State officials authorized to enforce the collection of such taxes, fees and penalties, a well bound book record of all taxes accruing during the pendency of such restraining order or injunction. Such book record shall include a record of purchases, receipts and sales or other disposition of all commodities, products, materials or articles upon which such taxes are levied or by which the amount of such taxes are measured. Provided further, that said applicant shall make and file with the State official authorized to enforce the collection of the tax involved, on Monday of each week, a report on a form or forms to be prescribed by said State official showing the weekly accruals of the tax involved together with total purchases, receipts, sales and other disposition of all commodities, products, materials and articles on which the tax involved in such injunction is levied or by which such tax is measured. Such report shall also show the name and address of all persons from whom such commodities, products, materials and articles were purchased or received and the name and complete address of all persons to whom such commodities, products, materials and articles were sold or distributed. If payment of the tax involved is evidenced or measured by the sale or use of stamps or tickets, a complete record of all such stamps and tickets used, sold or handled shall be kept and shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing, if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to comply with the Attorney General's demand to file any additional bond necessary to cover double the amount of taxes, fees and penalties accruing subsequent to the granting of said injunction or in the absence of a bond, to pay, on Monday of each week, into the suspense account of the Treasurer of Texas all taxes, fees and penalties involved in said litigation and thereafter becoming due, and such payments shall be made before said taxes, fees and/or penalties become delinquent. Any proceedings to enjoin the collection of any of the foregoing taxes shall be in a court of competent jurisdiction in Travis County, Texas.

The Attorney General or any State official authorized to enforce the collection of the tax involved may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Act or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which the applicant resides or any other peace officer in this State.

In the event the injunction is finally dissolved or dismissed the Treasurer shall make demand upon the applicant and his sureties on any bond filed in lieu of the payment of any taxes, fees and penalties, for immediate payment of said taxes, fees and penalties which if not paid shall be recovered in a suit to be filed by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction. Provided further, that if said injunction is dissolved or dismissed all taxes, fees and penalties or other funds paid into the suspense account of the Treasurer under the provisions of this Act shall be paid to the funds to which said taxes, fees and penalties are allocated. If the



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final judgment maintains the right of the applicant to a permanent injunction to prevent the collection of such taxes, the funds so deposited shall be refunded by the Treasurer to said applicant together with any depository interest the Treasurer may have collected for the deposit of such funds.

#### Secs. 2-8.

Sections 2-8 are amendments of Article 7047c-1, §§ 1, 3, 3b, 4-7, 9, 18, respectively.

Sec. 9. That all taxes, penalties and interest accruing to the State of Texas by virtue of any of the repealed or amended provisions as set out in this Act before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties and interest accruing under the provisions of prior or pre-existing cigarette tax laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

Sec. 10. The passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense. Providing, that all other laws or parts of laws that conflict herewith are hereby in all things repealed.

Sec. 11. If any article, section, subsection, sentence, clause, phrase, or word of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, phrase, and word thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, phrases, or words should be declared unconstitutional. Acts 1937, 45th Leg., p. 621, ch. 310.

Section 12 of this Act declared an emergency and provided that the act should take effect from and after its passage.

#### Title of Act:

An Act relating to the collection of excise and other taxes and relating to injunctions, bonds, the payment of taxes, refunds, reports, records, etc., and amending Sections 1, 3, 4, 5, 6, 7, 9, and 18 of House Bill No. 755, Chapter 241, General Laws of the Forty-fourth Legislature, Regular Session, and adding a new section thereto to be known as Section 3B; authorizing the Comptroller to promulgate certain rules and regulations to regulate the sale of cigarettes into other states when such cigarettes have the tax stamp of such other states affixed; prescribing records to be kept by salesmen of cigarette manufacturers and by persons soliciting orders for

cigarettes for shipment to points within the State; providing for the shipment of cigarette stamps; requiring common and contract carriers to keep certain records open to inspection of certain State officials; preserving taxes, penalties and interest accruing to the State under the provisions of prior cigarette tax laws before the effective date of this Act; repealing laws in conflict herewith; providing that offenses committed or prosecutions begun under pre-existing laws may be conducted under the law as it existed at the time the offense was committed; providing that if any part of this Act shall be held invalid or unconstitutional such decision shall not affect the validity of the remaining portions thereof, and declaring an emergency. Acts 1937, 45th Leg., p. 621, ch. 310.

#### Art. 7057a. Occupation tax on oil produced; definitions

**Amount and computation of tax; records and reports; time of payment; penalty; mode of payment and persons liable; disposition of proceeds**

Sec. 2. (1) There is hereby levied an occupation tax on oil produced within this State of two and three-quarters cents (2¾¢) per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the

total barrels of oil produced or salvaged from the earth or waters of this State without any deductions, and shall be based upon tank tables showing one hundred per cent (100%) of production and exact measurements of contents. Provided, however, that the occupation tax herein levied on oil shall be two and three-quarters per cent (2¾%) of the market value of said oil whenever the market value thereof is in excess of One Dollar (\$1) per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums, or other things of value paid therefor or which such oil will reasonably bring, if produced in accordance with the laws, rules and regulations of the State of Texas.

(2) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports under oath as hereinafter provided.

(3) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer on other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Provided, that if oil produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said oil were sold.

(4) The tax levied herein shall be paid monthly on the twenty-fifth day of each month on all oil produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorney fees and court costs incurred by such legal action.

(5) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

(6) The tax herein levied shall be borne ratably by all interested parties, including royalty interests, and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due.

(7) The taxes herein provided for, when paid shall be, and hereby are, allocated as follows, to wit:

One-half (½) of said tax when and as received by the Comptroller shall be paid to the State Treasurer of Texas and be placed to the credit of the Available School Fund, and one-half of such taxes when and as received by the Comptroller shall be paid to the State Treasurer to be placed to the credit of the General Fund of the State. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 4.

**Suit to collect delinquent tax, penalty, or interest; audit or report as evidence**

Sec. 7a. If any producer or purchaser of crude oil, or subsequent purchaser, fails or refuses to pay any tax, penalty, or interest within the

time and manner provided by this Act and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of crude oil produced or purchased on which such tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further that such report or audit may be admitted in evidence only against the party by or for whom it was made.

In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; and all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder. As added Acts 1939, 46th Leg., p. 633, § 1.

**Removal of oil from lease unlawful where owner or operator has not filed reports**

Sec. 8a. On notice from the State Comptroller, it shall be unlawful for any person to remove any oil from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Act. As added Acts 1939, 46th Leg., p. 634, § 1.

**Transfer of lease noted on last report; acquirement of lease shown on first reports; requisites**

Sec. 8b. Whenever any lease producing oil changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Act. It further shall be the duty of the new owner or operator of said leases to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver formerly owning and/or operating said lease. As added Acts 1939, 46th Leg., p. 634, § 1.

Section 2 of the amendatory acts of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Art. 7057b. Payment of license or privilege taxes under protest****Suits for recovery of taxes or fees**

Sec. 2. Upon the payment of such taxes or fees, accompanied by such written protest, the tax-payer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any tax-payer all other tax-payers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporations or association of persons who have paid under protest such taxes or fees referred to in Section 1 hereof. As amended Acts 1939, 46th Leg., p. 643, § 1.

**Payment of additional taxes under protest after filing suit; amendment of petition; jurisdictional amount**

Sec. 2a. After such suit is filed in a Court of competent jurisdiction in Travis County, and before such suit is tried by said Court, said tax-payer pays additional taxes under protest, the grounds of protest being the same as in the original petition filed in said Court, and the total of said taxes exceeds the jurisdiction of said Court, then the tax-payer will be authorized to file suit within ninety (90) days after the payment of such additional taxes in a Court in Travis County which has jurisdiction of the total amount of said taxes paid under protest, and when such suit is filed it shall be deemed to have been filed in conformity with the provisions of this Act; provided further, that a tax-payer may amend his original petition setting up such additional taxes paid under protest, and such amendment, if filed within ninety (90) days after the date of payment of such additional taxes under protest, shall not be considered a new cause of action. Provided further, that if an appeal is taken from the final judgment rendered in such suit, the tax-payer will not be relieved of the duty of continuing paying said taxes under protest pending the appeal of said case; however, it will not be necessary for such tax-payer to file suit within ninety (90) days after the payment of such taxes, but the disposition of such taxes shall be governed by the outcome of the original suit. As added Acts 1939, 46th Leg., p. 643, § 2.

**Application of amendatory Act**

Sec. 2b. The provisions of this Act shall apply to all taxes paid under protest, and which taxes have not been finally determined to belong to the State. As added Acts 1939, 46th Leg., p. 643, § 3.

The 1939 amendment, cited to the text, changed section two of this article by adding the last sentence relating to class actions. It also added sections 2a and 2b.

Section 4 of amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 7057d. Discount for taxes paid in advance**

All taxpayers shall be allowed discounts for the payment of taxes due to the State and all governmental and political subdivisions and

For Annotations and Historical Notes, see *Vernon's Texas Annotated Statutes*

taxing districts of the State, said discounts to be allowed under the following conditions: (a) three (3%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State, if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent; (b) two (2%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid sixty (60) days before the date when they would otherwise become delinquent; (c) one (1%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State, if such taxes are paid thirty (30) days before the date when they would otherwise become delinquent. Provided, however, that the provisions of this section shall not apply to water improvement districts, irrigation districts, levee districts, water control districts, and other governmental subdivisions, cities, towns and independent school districts unless and until the governing body of such water improvement districts, irrigation districts, levee districts, water control districts, and other governmental subdivisions, cities, towns, or independent school districts by ordinance, resolution or order, shall adopt the provisions hereof; and in the event any such water improvement district, irrigation district, levee district, water control district, and other governmental subdivisions, city, town or independent school district elects to allow such discounts, then the governing body of each water improvement district, irrigation district, levee district, water control district, and other governmental subdivisions, city, town or independent school district, shall have power, by the ordinance, resolution or order levying the annual taxes, to designate the months in which such discounts of three (3%) per cent, two (2%) per cent, and one (1%) per cent respectively shall be allowed, but in no event shall the same apply to split payment of taxes. Acts 1939, 46th Leg., p. 654, § 1.

Section 2 of the act cited to the text repeals art. 7255a; section 3 amends Art. 7336; section 4 repeals all conflicting laws and parts of laws.

Section 5 read as follows:

"It is further provided that in case any section, clause, sentence, paragraph or part of this Act shall for any reason be adjudged by any court of competent or final jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the section, clause, sentence, paragraph or part thereof directly involved in the controversy in which said judgment shall have been rendered."

Section 6 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing for tax discounts to all taxpayers for taxes due the State and all governmental and political subdivisions and taxing districts; prescribing the mode,

manner, and amount of such discounts; and providing that the same shall not apply to cities, towns, school districts and other governmental subdivisions unless and until the governing bodies thereof shall, by proper ordinance or order, adopt the provisions hereof; giving such governmental subdivisions authority to designate the months in which such discounts shall be allowed, and providing that the same shall not apply to the split payment of taxes in such governmental subdivisions; repealing Section 1 of Chapter 10 of the Acts of the Fourth Called Session of the Forty-third Legislature; amending Section 2 of Chapter 10 of the Acts of the Fourth Called Session of the Forty-third Legislature by fixing the time when poll taxes and ad valorem taxes shall become delinquent; prescribing the duties of the Comptroller of Public Accounts; repealing all laws and parts of laws in conflict with this Act; declaring the Legislative intent; and declaring an emergency. Acts 1939, 46th Leg., p. 654, § 1.

## CHAPTER TWO—TAXES BASED UPON GROSS RECEIPTS

Art.

7064a. Occupation tax, life, health and accident, premiums, reports, exceptions, deductions, domestic companies [New].

## Art. 7059. 7370 Telegraph companies

(a) Each individual, company, corporation, or association owning, operating, controlling, or managing any telegraph lines in this State, or owning, operating, controlling, or managing what is known as wireless telegraph stations, for the transmission of messages or aerograms and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July, and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer, or superintendent of such companies, corporations, or associations, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraphic or aerographic charges, including the amount received on full rate messages and aerograms and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter, excepting all business transacted for and on behalf of the agencies of the United States Government for which rates are prescribed by the Postmaster General. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to two and three-quarters ( $2\frac{3}{4}$ ) per cent of said gross receipts, as shown by said report.

(b) No city or other political subdivision of this State, by virtue of its taxing power, police power, or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation, or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 2; Acts 1937, 45th Leg., 2nd C.S., p. 1918, ch. 36, § 1.

Section 2 of the amendatory act of 1937 repeals all conflicting laws and parts of laws; sec. 3 provided that: "If any section, paragraph, sentence, or clause hereof shall be held to be invalid or unconstitu-

tional, same shall not affect the remaining portion of this Bill." Section 4 declared an emergency and provided that the act should take effect from and after its passage.

## Art. 7060. 7371 Gas, electric light, power or waterworks

Each individual, company, corporation or association, owning, operating or managing or controlling any gas, electric light, electric power or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power or water, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association showing the gross amount received from such business done in each such incorporated city or town within this

State in the payment of charges for such gas, electric lights, electric power or water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any such incorporated town or city of twenty-five hundred (2500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last United States Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to seven-tenths of one per cent (0.7 of 1%) of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last United States Census next preceding the filing of said report, the said individual, company, corporation or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to one and three-eighths per cent ( $1\frac{3}{8}\%$ ) of said gross receipts, as shown by said report. Nothing herein shall apply to any such gas, electric light, power or water works or water and light plant within this State owned and operated by any city or town, nor to any County or Water Improvement or Conservation District. Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation or association, and distributed by another, the tax shall be paid by the distributor alone.

No city or other political subdivision of this State, by virtue of its taxing power, police power or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 3.

#### Art. 7064. 7376 Occupation Tax, Insurance Companies

Every insurance corporation, Lloyd's, or reciprocals, and any other organization or concern transacting the business of fire, marine, marine inland, accident, credit, title, livestock, fidelity, guaranty, surety, casualty, or any other kind or character of insurance business other than the business of life insurance, and other than fraternal benefit associations, within this State at the time of filing its annual statement, shall report to the Board of Insurance Commissioners the gross amount of premiums received upon property located in this State or on risks located in this State during the preceding year, and each of such insurance carriers shall pay an annual tax upon such gross premium receipts as follows: shall pay a tax of three and twenty-five one hundredths (3.25) per cent, provided, that any such insurance carriers doing two (2) or more kinds of insurance business herein referred to shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this law shall be the total gross amount of premiums received on each and every kind of insurance or risk written, except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policyholders, but there shall be no deduction for premiums paid for reinsurance. The gross premium receipts, as above defined, shall be reported and shown as the premium receipts in the report to the Board of Insurance Commissioners by the insurance carriers, upon the sworn statements of two (2)

principal officers of such carriers. Upon receipt by the Board of Insurance Commissioners of the sworn statements, showing the gross premium receipts by such insurance carriers, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each insurance carrier, which tax shall be paid to the State Treasurer on or before the 1st of March following, and the Treasurer shall issue his receipt to such carrier, which shall be evidence of the payment of such taxes. No such insurance carrier shall receive a permit to do business in this State until all such taxes are paid. If any such insurance carrier shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: real estate in this State, bonds of this State or of any county, incorporated city or town of this State, or other property in this State in which by law such insurance carriers may invest their funds, then the annual tax of any such insurance carriers shall be one and one-fourth ( $1\frac{1}{4}$ ) per cent of its said gross premium receipts; and if any such insurance carrier shall invest as aforesaid as much as one-half of its assets, then the annual tax of such insurance carrier shall be five eighths of one per cent of its gross premium receipts, as above defined. No occupation tax shall be levied on insurance carriers herein subjected to a gross premium receipt tax by any county, city, or town. All mutual fraternal benevolent associations, now or hereafter doing business in this State under the lodge system and representative form of government, whether organized under the laws of this State or a foreign State or country, are exempt from the provisions of this Article. The taxes aforesaid shall constitute all taxes collectible under the laws of this State against any such insurance carriers, except the maintenance tax provided for under Article 4902 and the tax on premiums received under Workmen's Compensation Insurance policies, as provided for in House Bill No. 471, Chapter 25, General and Special Laws, Forty-fifth Legislature, Regular Session<sup>1</sup>; taxes provided in House Bill No. 258, Chapter 125, General and Special Laws, Forty-fifth Legislature, Regular Session<sup>2</sup>; and Senate Bill 77, Chapter 335, General and Special Laws, Forty-fifth Legislature, Regular Session<sup>3</sup>; and no other tax shall be levied or collected from any insurance carrier by any county, city, or town, but this law shall not be construed to prohibit the levy and collection of State, county, and municipal taxes upon the real and personal property of such carrier. Purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from provisions of this law; however, foreign assessment casualty companies admitted to do business in Texas under Chapter 5, Title 78, Revised Civil Statutes of Texas of 1925,<sup>4</sup> shall also pay a tax of three and twenty-five one hundredths (3.25) per cent of their gross premium receipts from Texas business, as such receipts are herein defined. Provided, however, if any such company shall have an amount equal to one-half of the gross amount of assessments, dues, premiums, or other amounts collected from policyholders within this State during the preceding year, as shown by the sworn statement herein required to be filed, invested in any or all of the above-mentioned securities, then the annual tax of such company shall be two (2) per cent of its said receipts for such preceding period, and if such company shall have invested as aforesaid an amount equal to the gross amount of such receipts for the preceding year, as shown by said sworn statement, then the annual tax of such company shall be one-half of one per cent of its said receipts. As amended Acts 1936, 44th Leg., 3rd



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

C.S., p. 2040, ch. 495, Art. 4, § 5; Acts 1937, 45th Leg., p. 525, ch. 258, § 1; Acts 1939, 46th Leg., p. 638, § 1.

<sup>1</sup> Art. 4918a.

<sup>2</sup> Art. 6243e.

<sup>3</sup> Art. 4682b.

<sup>4</sup> Art. 4781-4783, repealed.

Section 2 of the amendatory Act of 1937 and section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Art. 7064a. Occupation tax, life, health and accident, premiums, reports, exceptions, deductions, domestic companies**

Every group of individuals, society, association or corporation domiciled in the State of Texas transacting the business of life, accident, or life and accident, health and accident insurance for profit, or for mutual benefit or protection, shall at the time of filing its annual statement report to the Board of Insurance Commissioners the gross amount of premiums received from or upon the lives of persons residing or domiciled in this State during the preceding year and each of such groups of individuals, society, association, or corporation shall pay an annual tax of one-half of one per cent of such gross premium receipts, provided, however, that this tax shall not apply to local mutual aid associations, or fraternal benefit societies or organizations. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance, but there shall be no deduction made for premiums paid for reinsurance. If any such group of individuals, society, association, or corporation does more than one kind of insurance business, then it shall pay the tax herein levied upon the gross premium for each kind of insurance written; the provisions of this Act shall not apply to fraternal insurance organizations or societies that limit their membership to one occupation. The report of the gross premium receipts shall be made upon the sworn statement of two (2) principal officers. Deductions from the gross premium receipts shall be allowed any group of individuals, society, association, or corporation of an acquisition cost of all of the first year's premiums, except that on industrial business such companies shall be permitted to deduct one and one-half (1½) times the amount of the first year's premiums as acquisition costs. Upon receipt by it of the sworn statements above provided for, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each of such group of individuals, society, association, or corporation, which tax shall be paid to the State Treasurer on or before the 1st of March following and the Treasurer shall issue his receipt therefor as evidence of the payment of such taxes. No such group of individuals, society, association, or corporation shall receive a permit to do business until all such taxes are paid. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State against any such insurance organizations, except the fees provided for under Article §920, Revised Civil Statutes of Texas of 1925, as amended by Acts of the Forty-second Legislature of 1931, Chapter 152, Section 1, and no other taxes shall be levied or collected by any county, city, or town except State, county and municipal ad valorem taxes upon the real and personal property of such insurance organizations. As added Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 4, § 5b, as amended Acts 1937, 45th Leg., p. 525, ch. 258, § 1b, Acts 1939, 46th Leg., p. 640, § 1.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Art. 7065a—6. Bond of distributor; approval by Comptroller; deposits in lieu of bond

(a) Before any permit shall be issued and before engaging in the first sale of motor fuel in Texas, every distributor shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a distributor to be obtained. The said bond shall be signed by said distributor and a good and sufficient surety company or companies authorized to do business in this State to be approved by the Comptroller, in an amount not less than One Thousand (\$1,000.00) Dollars nor more than Twenty-five Thousand (\$25,000.00) Dollars, payable to the State of Texas, and conditioned upon the full, complete and faithful performance of all the conditions and requirements of the law taxing motor fuel, on a form to be prescribed by the Comptroller with the approval of the Attorney General, expressly providing for the performance of said obligation and the payment of all taxes, costs, penalties and interest at Austin, Texas; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not exceed the penal sum named therein; provided, further, that any such bond, continuous in form, may be continued in effect by a renewal certificate and, if so continued in effect, shall be sufficient to support the issuance of any new permit; and provided further that the said renewal certificate, as, if and when issued, shall have all the force and effect of an original bond for the calendar year for which said renewal certificate is issued. The amount of any bond required of any distributor shall be fixed by the Comptroller, and subject to the limitations herein provided, additional bond shall be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory or unacceptable. However, the distributor may demand a reduction of his bond after six (6) months from the effective date hereof in a sum to be not more than three times the highest tax said distributor has paid for any month during the preceding six (6) months, but which shall never be less than the minimum nor more than the maximum aforesaid. Provided that the Comptroller shall have the authority at his discretion to permit any distributor to make reports and payments at shorter intervals than one (1) month, and in such cases to accept bonds based on the shorter intervals, but expressly provided that no bond accepted by the Comptroller based upon shorter intervals of payment of tax shall ever be less than One Thousand (\$1,000.00) Dollars.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. Should the distributor fail or refuse to supply a new or an additional bond within ten (10) days after demand, the Comptroller shall forthwith cancel said distributor's permit. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries on any bond or execution of any new bond or renewal of a permit shall invalidate any bond. A new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond.

(c) Any surety on any bond furnished by any distributor as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided however, that

such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty (30) day period. The Comptroller shall promptly on receipt of notice of such request notify the distributor who furnished such bond, and unless such distributor shall on or before the expiration of such thirty (30) day period, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Act provided, the Comptroller shall forthwith cancel the license of said distributor. If such new bond shall be furnished by said distributor as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) That in lieu of giving a bond, any distributor may deposit in the Suspense Account of the State Treasury, money in the amount of the bond that may be required, which shall never be released until securities are substituted for the same or a bond executed in lieu thereof, or until the Comptroller has made a complete and thorough investigation and authorized the same to be released; and provided, in lieu of cash or the bond required by this Act, such distributor may deposit securities with the Comptroller, that shall be acceptable to him. Said securities shall be placed in the Treasury as other securities, but in all events shall be of the same class as the funds of the University of Texas may be legally invested in. Provided however, that if, in the opinion of the Comptroller, the cash or securities so deposited shall become insufficient for the purpose for which they were deposited, he shall demand additional cash or securities, and upon the failure or refusal of distributor to supply the additional cash or securities within ten (10) days after demand, the Comptroller shall forthwith cancel the distributor's permit.

Providing when default of payment of taxes is made by any distributor who has money and/or securities deposited with the State Treasurer in lieu of a bond as herein provided, suit shall be instituted by the State and after the State has established its debt for delinquent taxes by judgment of Court, money on deposit in suspense account shall be withdrawn therefrom and shall be used to pay off and satisfy such judgment, and provided further, if securities are on deposit with the State Treasurer, such securities shall be sold by the Comptroller, and the proceeds of sale shall be used in paying off and satisfying said judgment.

Provided, further, in event a distributor enters into written agreement to pay taxes levied under the provisions of this Act at intervals or dates more frequent than monthly, failure to comply with such written agreement shall constitute sufficient cause for cancellation of permit forthwith by the Comptroller. Written notice mailed to the distributor at the address reflected in the application for permit, or delivered in person by a representative of the Comptroller, to agents in charge shall be considered as sufficient notice of such cancellation. As amended Acts 1939, 46th Leg., p. 635, § 1.

Section 2 of the amendatory Act of 1939 repeals all conflicting laws and parts of laws; section 3 declared an emergency and

provided that the Act should take effect from and after its passage.

#### Art. 7065a—7. State's lien on property of distributor for taxes, fines, etc.

All taxes, fines, penalties and interest due by any distributor to the State shall be a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include refinery, blending plants, storage tanks, warehouses, office buildings and equipment, tank

trucks or other motor vehicles, stocks on hand of every kind and character whatsoever used or usable in such business, including crude oil or other materials for the manufacture, refining, blending or compounding of motor fuels and the refined products therefrom and the proceeds from the sale of such materials and refined products, and any other property of every kind and character whatsoever and wherever situated devoted to such use, and each tract of land on which such refinery, blending plant, tanks or other property is located, or which is used in carrying on such business.

If any distributor shall fail to remit proper taxes due, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted, the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted for making other audits, and said sums are hereby appropriated for that purpose. Provided, that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

When it shall appear that a distributor or taxpayer to whom the provisions of this Act shall apply has erroneously reported and paid more taxes than were due during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid. As amended Acts 1939, 46th Leg., p. 507, § 2.

For sections 4-6 of the amendatory Act of 1939, see article 7065a—13.

**Art. 7065a—12. Records of common carriers, access to; monthly reports; manifests; stopping motor fuel carriers to examine manifests.**

(a) Every common carrier in this State having the custody of books or records showing the transportation of motor fuel both interstate and intrastate shall give and permit the Comptroller or his duly authorized representative free access to such books and records.

(b) All persons operating trucks, pipelines and other conveyances as common carriers in the transportation of motor fuel into and from this State, exclusive of railroads, shall render a sworn report to the Comptroller not later than the 20th of each month, showing a description of the truck or other conveyances in which the same was transported on such forms as shall be prescribed by the Comptroller, which was transported by such persons during the preceding month. There shall also be included in said report full data concerning the diversion of shipments enroute as amount to a change from interstate to intrastate and intrastate to interstate commerce. Such report shall show the points of origin and destination, the number of gallons shipped, the date, the consignee and the consignor and the kind of motor fuel. All persons operating railroads as common carriers in the transportation of motor fuel into and from this State, shall, as and when requested by the Comptroller, and in such form as may be prescribed, render, not later than the 20th of the following month, a sworn report for the preceding month, or for such other period or periods as may be requested, showing a description of the tank car or other conveyance in which the same was transported and shall render such other information concerning diversion of or change of shipments enroute from interstate to intrastate commerce or intrastate to interstate commerce, as may be required

by the Comptroller. Provided that no report be made by any such persons transporting motor fuel in quantities of less than twenty (20) gallons.

(c) All carriers, excepting railroads and pipelines, shall carry manifest issued by distributors or dealers in compliance with Section 8(b) of House Bill 247, Chapter 44, General Laws of the Regular Session of the Forty-third Legislature, as amended by House Bill No. 749, Chapter 240, General Laws of the Regular Session of the Forty-fourth Legislature.<sup>1</sup> All records provided for in this Act shall be kept by said carrier in Texas for a period of two (2) years, and shall at all times be subject to the inspection of the Comptroller or Attorney General or their authorized representatives.

In order to enforce the provisions of this Act, the Comptroller, his Tax Supervisors, or other authorized representatives, any Highway Patrolman, Sheriff, Constable and his deputies, and all other peace officers are empowered to stop any motor vehicle which might appear to be transporting motor fuel or other derivatives of crude petroleum or its products as cargo for the purpose of examining the manifest required to be carried, for examination of the commodity in transit, to take samples of the cargo, and for such other investigations as could reasonably be made to determine whether the cargo was motor fuel or other derivatives of crude petroleum or its products, and whether manifest indicated that the State tax was a part of the consideration involved in the sale or distribution of any motor fuel carried. If, upon said examination, it is found that the driver of any such motor vehicle transporting motor fuel does not possess or refuses to exhibit a manifest required herein, or if said manifest carried is false or incomplete said authorized officers shall impound and take possession of the said motor vehicle and its contents, and unless proof is produced, within seventy-two (72) hours from the beginning of such impoundment, that the motor fuel has been sold with the State tax as a part of the consideration therefor, the Sheriff or the Constable of the County in which said impoundment is made shall proceed to sell the said motor fuel in the manner provided by law for the sale of personal property under execution in this State. Upon said sale the Sheriff or Constable shall first pay to the Comptroller or his authorized representative the State tax due upon said motor fuel. The Sheriff or Constable shall receive such fees as are now allowed by law in the sale of personal property under execution in this State for the services rendered by him. The balance of said sum shall be turned over to the rightful owner of said motor fuel after deducting the reasonable expenses incurred in impounding and selling the same. Provided in the event a distributor or dealer is transporting motor fuel from his own storage under circumstances in which no sale is involved, the manifest of said motor fuel shall be exhibited showing such fact.

(d) Any person violating any provision of this section shall be liable for the penalty described in Section 9, House Bill No. 247, Chapter 44, General Laws of the Regular Session of the Forty-third Legislature, as amended by House Bill No. 749, Chapter 240, General Laws of the Regular Session of the Forty-fourth Legislature.<sup>2</sup> Provided no report or information is required herein, the requiring of which would be a violation of the laws and Constitution of the United States or Texas, or an unlawful burden on interstate or foreign commerce. As amended Acts 1939, 46th Leg., p. 507, § 3.

<sup>1</sup> Article 7065a—8(b) ante.

<sup>2</sup> Article 7065a—9 ante.

For sections 4-6 of the amendatory Act of 1939, see article 7065a—13.

**Art. 7065a—13. Exemptions and refunds; license to handle exempt fuel; payments into Highway Motor Fuel Tax Fund**

(a) Any person who purchases motor fuel in the State of Texas, and any distributor who appropriates motor fuel for use when such motor fuel purchased by such person or used by such distributor for operating or propelling any stationary gas engine or tractor used for agricultural purposes, motor boats, air craft, or for any purpose other than use in a motor vehicle operated or intended to be operated in whole or in part upon any of the public highways, roads, or streets of the State of Texas on which motor fuel tax has been paid, either directly or indirectly, shall be refunded the amount of such taxes so paid by the distributor, exclusive of the deduction for evaporation and loss in the manner and subject to the limitations and conditions described herein. Provided, however, that no greater amount shall be refunded than has been paid into the State Treasury on any motor fuel. The tax actually paid by any distributor or person shall be refunded as provided herein on motor fuel not subject to the tax.

(b) Any person or distributor desiring to appropriate or sell motor fuel on which a refund of the tax is authorized by this Act shall, before making such appropriation or sale, make application to the Comptroller of Public Accounts, upon forms to be prescribed by the Comptroller and containing such information as the Comptroller may require, for a license to sell such motor fuel; and it shall be unlawful for any person to sell or appropriate any motor fuel upon which a refund of the tax will be made, or is intended to be made, without first having obtained from the Comptroller of the State of Texas a license to sell or appropriate such motor fuel.

A separate application shall be made to the Comptroller by such person or distributor for each place of business from which refund motor fuel is to be sold or distributed by such person or distributor, and the Comptroller shall issue a separate license for each such place of business. The Comptroller shall examine each application for license received by him, and, if found in due form, and if within the discretion of the Comptroller the applicant is entitled to such license, the same shall be issued. When such application is approved by the Comptroller the applicant for license shall be required to file oath with the Comptroller that he will faithfully perform and comply with the statute making provision for the sale and distribution of motor fuel subject to a refund of the motor fuel taxes. Each license issued hereunder shall remain in full force and effect until the first day of March following its date of issue, and annually on the first day of March each applicant, person or distributor, desiring to sell or appropriate motor fuel upon which a refund of the tax is authorized must obtain from the Comptroller a license, or a renewal of his existing license, to sell such motor fuel as herein provided. Any license issued hereunder is not transferable unless such transfer is authorized by the Comptroller. Any person who sells motor fuel upon which a refund of the tax may be authorized, or is claimed, under the provisions of this Act, without having obtained a license, as provided for under this Act, shall be guilty of a misdemeanor and upon conviction shall be liable in any sum not to exceed One Thousand (\$1,000.00) Dollars, or by a jail sentence not to exceed six (6) months in jail, or by both such fine and jail sentence.

Any person licensed under the provisions of this Act shall be required to maintain the records prescribed in Section 8(b) of House Bill No. 247, Chapter 44, Acts of the Regular Session of the Forty-third Legislature, as amended by House Bill No. 749, Chapter 240, Acts of

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes.

the Regular Session of the Forty-fourth Legislature,<sup>1</sup> and in addition thereto shall affix his license number to any invoice of exemption he may issue under the provisions of this Act.

The Comptroller shall prescribe the form of license to be used under this Act, and shall have authority, and it shall be his duty, to revoke and cancel any license issued hereunder when the licensee violates any section of this Act. And, in the event the Comptroller does revoke a license, then all books containing invoices of exemption held by such licensee shall be accounted for and surrendered to the Comptroller.

No refund of the tax shall be granted on any motor fuel to any person, claimant, firm, corporation, or otherwise, unless such motor fuel has been purchased from or used by a licensed distributor as provided for in this Act; and the Comptroller is hereby prohibited from issuing warrant in payment of any refund of the tax on any motor fuel not purchased from a licensed dealer, except refund on motor fuel exported or lost by accident, or used by distributor for refund purposes.

(c) Upon each delivery by licensee, or upon each appropriation for use of motor fuel upon which a refund of the tax may be claimed, an invoice of exemption shall be made out at the time of such delivery, or of such appropriation for use, which invoices of exemption shall state: the number of the license of the licensee; the number of gallons of motor fuel thus delivered or appropriated; the purpose for which such motor fuel will be used, or is intended to be used; the date of purchase, and the date and place of delivery, or appropriation; the name of the purchaser or user; the name of the agent or employee actually making the purchase, or appropriation, if any; the seller and place of business of seller; the manner of delivery. And the said invoice of exemption shall show thereon such other information as the Comptroller may require; and no refund shall be allowed unless the seller or licensee, at the time of any such delivery, or appropriation for use, and not thereafter, executes such an invoice of exemption as provided above.

And provided, further, that the person selling such motor fuel, or the licensee, in issuing invoices of exemption to the user of such motor fuel, shall make such invoices in duplicate, the duplicate of which shall be delivered to the user of such motor fuel, and the original shall be retained by the licensee for a period of two (2) years, at the place of business designated in the dealer's license, in the same manner and subject to the same examination as required of other records of motor fuel to be kept.

Each invoice of exemption issued by licensee shall be issued at the time of delivery by the licensee, or his employee, and shall also be signed by the user of such motor fuel, or by his duly authorized agent. The licensee or employee of licensee shall not sign for the purchaser when issuing the invoice of exemption.

(d) When a claimant purchases or acquires for use motor fuel upon which a refund of the tax may be due, he shall within six (6) months from the date of purchase of motor fuels upon which a refund is claimed, and not thereafter, file with the Comptroller an affidavit, on such forms as may be prescribed by the Comptroller. Said affidavit shall include a statement as to the source or place of purchase or acquisition of such motor fuel used for purposes other than in propelling motor vehicles over the highways of this State; that the information stated in the attached duplicate copy of the invoice of exemption is true and correct, and the manner in which said motor fuel was used, and that no part of said motor fuel was used in propelling motor vehicles over the high-

ways of this State. Said affidavit shall be accompanied by the duplicate copy of the invoice of exemption above referred to; and the Comptroller may require other affidavits in such form and time as he may deem advisable, and if he finds that such claims are just, and that the taxes claimed have actually been paid, then he shall within sixty (60) days issue warrant or warrants for the amounts due claimant, but no warrant shall be paid by the State Treasurer after twelve (12) months from the date thereof, and if such warrant is not presented within twelve (12) months from the date thereof, claimant shall forfeit his right to the refund.

No refund shall be made where motor fuel is used later than six (6) months from the date of purchase, or appropriation, and no refund shall ever be made where it appears from the invoice, or from the affidavits, or other evidence submitted, that the sale or purchase was made more than six (6) months prior to the date of filing of the application for refund. The date of filing shall be the day such claim is actually received in the Comptroller's office.

No refund of the tax shall be allowed on motor fuel used in any registered or licensed motor vehicle or in any motor vehicle operated or intended to be operated in whole or in part upon any of the highways, roads and streets of this State.

(e) When the Comptroller has issued license to any person desiring to sell or distribute motor fuel upon which a refund of the tax is authorized, or upon which a claim is to be filed for a refund of the tax, the Comptroller shall issue to such licensee a book, or books, of blank invoices of exemption, which invoices shall be serially numbered, and an original and a duplicate of each invoice shall be made. The Comptroller shall keep accurate records of the number of books of invoices of exemption issued and furnished to each licensee, and the licensee shall, at all times, account for all such books of invoices of exemption so received by him. Any invoices of exemption mutilated or unusable must be returned to the Comptroller by the licensee for credit to his account, and any unissued invoice of exemption lost or destroyed must be reported to the Comptroller by such licensee. The Comptroller shall not issue any additional books of invoices of exemption to a licensee until such licensee has made proper accounting for each invoice of exemption theretofore issued him. The books of invoices of exemption issued to a licensee are not transferable or assignable by such licensee unless such transfer or assignment is authorized by the Comptroller; and failure by such licensee to make proper accounting for all invoices of exemption issued to him by the Comptroller shall be cause for the revocation of his license.

If the duplicate invoice of exemption retained by purchaser is lost, or destroyed, by purchaser, such purchaser may make application to the Comptroller for forms to be used in lieu of lost duplicate.

The invoices of exemption required by this Act shall be furnished, free of cost, by the Comptroller to the licensee. And no forms of invoice of exemption shall be used by the dealer or user of refund motor fuel other than those issued and furnished by the Comptroller.

(f) All filing fees shall be paid into the State Treasury and be paid out on vouchers and warrants in such manner as may be prescribed by law.

(g) All the moneys paid into the Treasury under the provisions of this Act, except the filing fees provided herein, shall be set aside in a special fund to be known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until



a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 20th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on sale of motor fuel during the preceding month, and upon which a refund may be due, and shall certify to the Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds, and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller, and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If claimant has lost or loses, or for any reason failed or fails to receive warrant after warrant was or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas, of 1925, but in no event shall a duplicate warrant be issued after one (1) year from date of original warrant.

(h) So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided for herein, and if a specific amount be necessary then there is hereby appropriated and set aside for said purpose the sum of Two Hundred Thousand (\$200,000.00) Dollars or so much thereof as may be necessary. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the amount deducted originally by the distributor shall be deducted in computing the refund. The Comptroller shall deduct One (\$1.00) Dollar from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund, which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of this Act, as well as for the payment of expenses in furnishing the form of invoice of exemption provided for herein, and the same is hereby appropriated for such purpose. As amended Acts 1939, 46th Leg., p. 507, § 1.

1 Article 7065a-8(b).

Sections 4 and 5 of the amendatory Act of 1939 read as follows:

"Sec. 4. This Act, upon becoming a law, shall take effect and become operative from and after September 1, 1939.

"Sec. 5. If any section, subsection, sentence, clause, phrase, or word of this Act shall be construed and held by the Courts to be unconstitutional or invalid such hold-

ing shall not apply to any other part of the Act, and the same shall remain in force and effect as though the Courts had not passed on the validity of any section, subsection, sentence, clause, phrase, or word of the Act."

Section 6 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 7070. 7382 Telephone companies

(a) Each individual, company, corporation or association owning, operating, managing or controlling any telephone line or lines or any telephones within this State, and charging for the use of the same, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there

is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to one and one-half per cent ( $1\frac{1}{2}\%$ ) of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand five hundred (2,500) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to one and three-fourths per cent ( $1\frac{3}{4}\%$ ) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand five hundred (2,500) inhabitants and not more than ten thousand (10,000) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to two per cent (2%) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants according to the last preceding Federal census.

(b) No city or other political subdivision of this State, by virtue of its taxing power, police power or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch 495, Art. 4, § 1.

## CHAPTER FOUR—INTANGIBLE TAX BOARD

Art.

7098a. Comptroller ex officio Tax Commissioner [New].

### Article 7098. 7407 State Tax Board

The State Tax Board shall be composed of the Comptroller, the Secretary of State and of the Attorney General. A record of the proceedings of said Board shall be kept at the State Capitol, and shall be open to the inspection of the public. As amended Acts 1939, 46th Leg., p. 645, § 1.

Section 4 of the amendatory act of 1939 repeals all conflicting laws and parts of laws.

Section 5 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

### Art. 7098a. Comptroller ex officio Tax Commissioner

The Comptroller of the State of Texas shall be ex officio Tax Commissioner of the State of Texas. He shall discharge all duties placed upon the Tax Commissioner by any laws now or hereafter in force in this State. Acts 1939, 46th Leg., p. 645, § 2.

Section 3 of the Act of 1939 read as follows: "Any unexpended funds remaining in the appropriation for the current biennium for the office of Tax Commissioner of the State of Texas and its per-

sonnel, salaries, rents, and any and all maintenance and miscellaneous expense thereof, shall revert to the General Revenue Fund upon the passage of this Act."

## CHAPTER FIVE—INHERITANCE TAX

### Art. 7117. Property, including insurance, subject; transfers in contemplation of death

All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein, including property passing under a general power of appointment exercised by the decedent by will, including the proceeds of life insurance to the extent of the amount receivable by the executor or administrator as insurance under policies taken out by the decedent upon his own life, and to the extent of the excess over Forty Thousand Dollars (\$40,000) of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether such property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other State, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall, upon passing to or for the use of any person, corporation, or association, be subject to a tax for the benefit of the State's General Revenue Fund, in accordance with the following classification. Any transfer made by a grantor, vendor, or donor, whether by deed, grant, sale, or gift, shall, unless shown to the contrary, be deemed to have been made in contemplation of death and subject to the same tax as herein provided, if such transfer is made within two (2) years prior to the death of the grantor, vendor, or donor, of a material part of his estate, or if the transfer made within such period is in the nature of a final distribution of property and without adequate valuable consideration. As amended Acts 1939, 46th Leg., p. 646, § 1.

Section 2 of the amendatory Act of 1939 amends art. 7125; section 3 amends art. 7130; section 4 amends art. 7131; section 5 amends Pen.Code art. 107a; section 6 amends art. 7135.

Sections 7 and 8 read as follows:

"Sec. 7. If any section, provision, phrase, or clause of this Act should be declared invalid, such invalidity shall not be construed to affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalid part or parts.

"Sec. 8. This Act shall in no way be construed as releasing from claim for inheritance taxes the estate of any person, when the death of such person occurs prior to the effective date of this Act,

and in all such cases, the estate of such person shall be taxed and the tax shall be collected in accordance with the laws in effect at the date of the death of such person; provided further that the passage of this Act shall not terminate any claim for inheritance tax, interests, or penalties which may accrue to the State of Texas under the inheritance tax laws in force prior to the enactment of this Law. All such claims shall be collected in accordance with the provisions of the Law in effect at the date of the death of the person whose estate is taxed."

Section 9 repeals all conflicting laws and parts of laws; section 10 declared an emergency and provided that the Act should take effect from and after its passage.

### Art. 7125. Deductions

The only deductions permissible under this Law are the debts due by the estate, funeral expenses, expenses incident to the last illness of the deceased, which shall be due and unpaid at the time of death, all Federal, State, County, and Municipal taxes due at the time of the death of the decedent, attorney's fees and Court costs accruing in connection with the assessing and collecting of the taxes provided for under this Chapter, and an amount equal to the value of any property forming a part of the gross estate situated in the United States received from any per-

son who dies within five (5) years prior to the death of the decedent, this reduction, however, to be only in the amount of the value of the property upon which an inheritance tax was actually paid and shall not include any legal exemptions claimed by and allowed the heirs or legatees of the estate of the prior decedent. A full statement of facts authorizing deductions must be made in duplicate under oath by the executor, administrator, or trustee, and one copy filed with the County Clerk and the other with the Comptroller, before any deductions will be allowed. As amended Acts 1939, 46th Leg., p. 646, § 2.

#### Art. 7130. Appraisal

The Judge of the County Court having jurisdiction of the estate of the decedent shall appoint two (2) competent, disinterested persons, to be approved by the Comptroller, as appraisers to fix the value of the property of such decedent subject to taxation hereunder; or upon agreement of the parties interested to dispense with the appointment of appraisers, the County Judge and Comptroller shall appraise the property and make and file a report of such appraisal. The appraisers, being first sworn, shall forthwith give notice to all persons known to have any claim or interest in the property to be appraised, including the Comptroller of Public Accounts, the executor, administrator, or trustee, of the time and place when they will appraise the same. At such time and place, said appraisers shall appraise such property at its actual market value if it has a market value, and in case it has none, then its real value at the time of the death of the decedent, and shall thereupon make a report thereof in writing to said County Judge and Comptroller, who shall file and keep such report. If the same decedent shall leave property taxable hereunder to more than one person, said appraisal and report shall be made for the property of each of such persons. Each appraiser shall be paid, on the certificate of the County Judge, Five Dollars (\$5) for each day employed in such appraisal, together with his actual necessary expenses incurred therein. Where appraisers have been appointed under the provisions of this Act to appraise the assets of an estate for inheritance tax purposes and have made their return in accordance with the provisions of this Act to the County Judge, should there be any part of the estate valued too high or too low, as the case may be, or any other cause in the opinion of the Comptroller or the interested party or parties of said estate that the same has not been appraised in accordance with the Law governing the appraisal of same, the party or parties may within ten (10) days after the filing of the return of such appraisal, file with the County Judge a motion in writing setting forth the cause or causes wherein they complain as to the report of the appraisers, and the County Judge shall immediately give notice in writing to the Comptroller of Public Accounts and other interested parties of such complaint and set such motion down for a hearing not later than ten (10) days from the date the same was filed, and upon hearing thereof, if good and sufficient cause be shown, he may set aside such report of appraisal, and the same shall be held null and void, and proceed to appoint another set of appraisers as the Law provides, and in the event he overrules said motion to set aside such report of appraisal, then in that event, said party shall have the right to appeal the same to the District Court of the county wherein the administration of the estate is being held, or if there be no administration, or if it be a nonresident estate, then in the county wherein the principal part of the estate is located, within twenty (20) days by giving notice of appeal, and the District Court shall hear and try the same.

de novo, and enter its judgment on the matter in controversy accordingly. As amended Acts 1939, 46th Leg., p. 646, § 3.

**Art. 7131. Fixing tax; suspension pending appeal**

a. Immediately after the filing of the appraisal report, or as soon thereafter as practical, the County Judge shall calculate and determine the tax due on such property, according to the value thereof as shown in such appraisalment, and shall furnish a statement of the same to the Comptroller for verification. If the Comptroller finds the tax to be correct, he shall so advise the County Judge, whereupon it shall immediately become the duty of the County Judge to certify such amount to the collector of taxes, to the executor, administrator, or trustee, and to the person to whom, or for whose use, the property passes, and said tax shall be a lien upon such property from the death of the decedent until paid.

b. Provided in any case where an appeal has been taken from the report of appraisalment, as provided in Article 7130, the assessment of the inheritance tax by the County Judge, as provided in Paragraph a, above, shall be suspended until such time as the matters in controversy shall have been finally adjudicated and the County Judge shall reassess the tax in accordance with the new appraisalment. As amended Acts 1939, 46th Leg., p. 646, § 4.

**Art. 7135. Final accounts**

No final account of any executor, administrator, or trustee shall be allowed by the County Judge unless such account shows and said Judge finds that all taxes imposed under this Law on any property or interest passing through his hands as such have been paid. Neither shall the County Judge close any estate, or permit the delivery of any property to the legatee or heir without first ascertaining whether or not a tax is due under this Chapter, and if no tax is due, such fact must be shown by an instrument in writing, approved by the State Comptroller of Public Accounts, filed with the final papers closing said estate. Provided, however, the Comptroller shall have the authority to grant an extension of six (6) months before any estate shall be charged any penalty or interest. As amended Acts 1939, 46th Leg., p. 646, § 6.

**CHAPTER SIX—PROPERTY SUBJECT TO TAXATION AND  
RENDITION**

Art.  
7150d. Exemption of headquarters buildings of Texas Congress of Parents and Teachers [New].  
7155a. Local option elections in certain counties respecting annual tax

Art.  
for Domestic Livestock Protective Fund [New].  
7164a. Address of owner required to be given on rendering real or other property for taxation [New].

**Art. 7150. 7507, 5065 Exemption from taxation**

2a. Religious, educational and physical development associations.— That all property owned or used exclusively and reasonably necessary, in conducting any association engaged in the joint and threefold religious, educational and physical development of boys and girls, young men and young women, operating under a State or National Organization of like character, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and Association, and all endowment funds of the above mention-

ed religious institutions, not used with a view to profit but for the purpose of maintaining the Association and buildings in doing religious work and for the educational or physical development of boys and girls, young men and young women, shall be exempt from taxation; provided that land property received by said institutions in payment and satisfaction of endowment fund loans or investments shall be exempt for two years only after foreclosure purchase of said land, and no longer. Acts 1937, 45th Leg., p. 401, ch. 201, § 1.

Section 2 of the Acts of 1937, p. 401, ch. 201, section 1 of which enacted the provisions incorporated in section 2a, reads as follows:

"Sec. 2. Whereas, by Chapter 81, page 153, Acts of the Regular Session of the Thirty-third Legislature, 1913, which said Act was incorporated in the Revised Civil Statutes of 1925 as Article 7150, Section 2, the Legislature undertook to exempt the property of the above mentioned institutions from ad valorem taxes, which said Act and Statute was held unconstitutional in violation of Article VIII, Section 2, of the Constitution (City of San Antonio vs. Y. M. C. A., 285, S.W. 844); and

"Whereas, on November 6, 1928, by general election, Article VIII, Section 2 of the Constitution was amended so as to permit and authorize the Legislature to pass such exemption Statute, and it is necessary to re-enact the said Act of the Legislature of

1913 in order to make it effective and to carry out the purpose and intent and mandate of the people in amending the Constitution."

Section 3 declared an emergency making the act effective on and after its passage. It did not note the Governor's approval.

Became law without Governor's signature April 26, 1937.

**Title of Act:**

An Act to exempt from taxation the property owned or used exclusively and reasonably necessary in conducting any Association engaged in promoting three-fold religious, educational and physical development of boys and girls, young men and young women operating under a State or National Organization of like character, and all endowment funds of such institutions, and declaring an emergency. Acts 1937, 45th Leg., p. 401, ch. 201.

**Art. 7150d. Exemption of headquarters buildings of Texas Congress of Parents and Teachers**

Section 1. All headquarters buildings designated as State office buildings of the Texas Congress of Parents and Teachers, from and after the passage of this Act, shall be exempt from all State and County taxes, including all ad valorem taxes.

Sec. 2. All headquarters buildings designated as State office buildings of the Texas Congress of Parents and Teachers, from and after the passage of this Act, shall be exempt from all occupation taxes.

Sec. 3. If any part or parts of this Act shall be held unconstitutional, such decision shall not affect the validity of the remaining portions hereof, and such is hereby declared to be the intention of the Legislature. Acts 1939, 46th Leg., Spec.L., p. 965.

Effective 90 days after June 21, 1939, date of adjournment.

Section 4 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act exempting from all State and County ad valorem and occupation taxes certain office buildings of the Texas Congress of Parents and Teachers; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 965.

**Art. 7152. 7509, 5067 How rendered**

All property shall be listed or rendered in the manner following:

(1) By the owner. Every person of full age and sound mind, being a resident of this State, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

(2) As agent. He shall also list all lands or other real estate, moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company, or corporation, whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

(3) Minor. The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

(4) Wife. The property of a wife, by her husband, if of sound mind; if not, by herself.

(5) Idiot. The property of any idiot or lunatic, by the person having charge of such property.

(6) Cestui que trust. The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

(7) Receivers. The property of corporations whose assets are in the hands of receivers, by such receivers.

(8) Corporations. The property of a body politic or corporate, by the president or proper agent or officer thereof.

(9) Co-partnership. The property of a firm or company, by a partner or agent thereof.

(10) Manufactories. The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise. As amended Acts 1937, 45th Leg., p. 1132, ch. 455, § 1.

Section 2 of the amendatory Act of 1937 declared an emergency and provided that the act should take effect from and after its passage.

The title to Acts 1937, 45th Leg., p. 1132, ch. 455, purported to repeal section 11 of

this article as it appeared prior to amendment of 1937, but the body of the Act did not contain a repealing clause. However, the body of the Act amended this article so as to omit subdivision 11.

#### Art. 7155a. Local option elections in certain counties respecting annual tax for Domestic Livestock Protective Fund

Section 1. In all counties in this State having ten thousand (10,000) or more cattle, sheep, and goats rendered for taxation, the qualified voters of such county may, as hereinafter provided, employ additional assistance to the law enforcement officers of such county as hereinafter provided.

Upon the petition of ten (10) per cent of the qualified voters of such county, presented to the Commissioners Court in open Regular Session, requesting such Court to order an election to be held in such county to determine whether or not said Court, when acting as a Board of Equalization in such county, shall levy, and cause to be assessed and collected an annual tax not to exceed one (1) cent per head on all sheep and goats and not to exceed five (5) cents per head on all cattle, within such county; said Court shall order such election to be held within such county, in accordance with the petition therefor; and said Court shall forthwith order such election to be held in the voting places within such county, upon a day not less than ten (10), nor more than twenty (20) days, from the date of said order and the order thus made, shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity have been duly complied with; and provided further that such Court shall appoint such officers to hold such election as is now required to hold general elections. The expenses of such election shall be borne by the county wherein such

election is ordered and held. In such election so held, the ballot shall read as follows:

"For the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

"Against the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

Returns of such election shall be made by the presiding officer of the precincts of such county where such election is held, to the County Judge of said county, who shall forthwith call the Commissioners Court together for the purpose of canvassing the returns; and if it shall be found by the Commissioners Court, upon a canvass of such returns, that a majority of the qualified voters of the county wherein such election is held, is in favor of the levy, assessment, and collection of the annual tax on sheep and goats of not more than one (1) cent per head and on cattle not more than five (5) cents per head, then said Court shall forthwith declare the results of said election and give public notice thereof by proclamation of said Court to be issued and posted at three (3) public places of the county in which such election is held; and shall thereafter, at the next succeeding meeting of said Court acting as the Board of Equalization for such county, levy and cause to be assessed and collected by the Assessor and Collector of Taxes for such county, not more than one (1) cent per head on all sheep and goats and not more than five (5) cents per head on all cattle within such county, on the 1st day of January preceding the date of such meeting.

**Tax moneys to be deposited in Domestic Livestock Protective Fund**

Sec. 2. All moneys assessed and collected by the Assessor and Collector of Taxes for each county of this State as provided for in Section 1 hereof, shall be paid by said Collector unto the County Treasurer of such County, and said Treasurer shall deposit said moneys to a fund to be known as "The Domestic Livestock Protective Fund," and such moneys shall never be expended for any other purpose than is herein provided.

**Employment of enforcement officers by Commissioners Court; compensation; duties; reports**

Sec. 3. To aid in the enforcement of all the Penal Laws of this State and in ferreting out and detecting any violation thereof, it shall be the duty of the Commissioners Court of such county adopting the provisions hereof, and they are hereby authorized and required to employ for such service, in addition to the officers now provided for by law, as many other competent and discreet persons as, in the judgment of said Court, is deemed necessary for said purposes, and shall fix their compensation; provided however, no such person, or persons, shall be paid in excess of Five Dollars (\$5) per day, while in actual service; and provided further that at no time, shall the moneys expended in the payment of such person, or persons, for such services, exceed the amount of money collected therefor. Such Court shall designate the duties to be performed by all such persons and shall require them to make monthly reports in writing to said Court as to the manner in which they have performed such duties. Acts 1937, 45th Leg., p. 831, ch. 408.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to provide for a local option election in counties having ten thousand (10,000) or more cattle, sheep, and goats ren-

dered for taxation to determine whether or not the qualified voters of such county desire to authorize the levy, assessment, and collection of an annual tax on cattle, sheep, and goats; providing for the method of levying, assessing, and collecting such annual tax; and further providing for the deposit of the moneys collected from



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such annual tax in a special fund to be known as "The Domestic Livestock Protective Fund"; providing authority and requiring the Commissioners Court of such county adopting the provisions of this Act to

employ additional law enforcement officers, and fixing the compensation of such officers and the reports to be filed by them, and declaring an emergency. Acts 1937, 45th Leg., p. 831, ch. 408.

#### Art. 7164a. Address of owner required to be given on rendering real or other property for taxation

That hereafter in all counties in the State of Texas containing a population of not less than ten thousand, nine hundred and seventy (10,970), nor more than ten thousand, nine hundred and ninety (10,990), according to the last preceding Federal Census, anyone owning real estate or other taxable property situated in said county on rendering the same for taxation to the County Tax Assessor and Collector for assessment for State and County ad valorem taxes shall render the same in the name of the owner thereof giving his correct post-office address at the time of such rendition, and if any representative or agent on and in behalf of said owner or owners shall render the same for taxation, said agent or representative shall likewise render the same in the name of the true owner of the said property giving the owner's or owners' correct post-office address at the time of said rendition. Acts 1937, 45th Leg., p. 792, ch. 387, § 1.

Section 2 of this act is Penal Code, art. 141f. Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

##### Title of Act:

An Act requiring owners of real estate or other taxable property in certain coun-

ties, or their agents or representatives, in rendering same for ad valorem taxation to give the post-office address of the owner or owners of said property at the time of such rendition; providing a penalty for failure to render such property in the manner herein prescribed; and declaring an emergency. [Acts 1937, 45th Leg., p. 792, ch. 387.]

### CHAPTER EIGHT—COLLECTION AND COLLECTOR

Art.  
7294a. Donation of one-half State ad valorem taxes to counties for five year period; payment over to county treasurer [New].

Art.  
7294b. Donation of state ad valorem taxes to San Jacinto, Trinity, Jasper, Sabine, San Augustine, Shelby, Houston, Tyler, Angelina and Walker counties [New].

#### Art. 7252. 7612, 5161, 4736 Deputies

Each Assessor and Collector of Taxes may appoint one or more deputies to assist him in the assessment and collection of taxes, and may require such bond from the person so appointed, as he deems necessary for his indemnity; and the Assessor and Collector of Taxes shall in all cases be liable and accountable for the proceedings and misconduct in office of his deputies; and the deputies appointed in accordance with the provisions of this Article shall do and perform all the duties imposed and required by law of Assessors and Collectors of Taxes; and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the Assessor and Collector of Taxes in person, provided, that in counties having a population of three hundred and fifty-five thousand (355,000) or more according to the last preceding Federal Census, the Assessor and Collector of Taxes may in addition contract with special deputies having special technical training, skill, and experience for the purpose of assisting him in obtaining information upon which to base proper valuations of oil and mineral bearing lands and properties and interests therein, industrial and manufacturing plants,

and other properties where special technical skill and training is required. In addition thereto, such special assistants, clerical, accounting, or stenographic, as may be necessary to conduct the organization herein provided for and to carry out the purposes of this Act may be applied for and appointed in like manner provided they shall be appointed only for purposes consistent with this Act. In addition thereto, the Assessor and Collector of Taxes shall be authorized to apply for the appointment of a special head of the automobile division of his office at a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum. The compensation to be paid such special deputies and special automobile department head shall be subject to the approval of the Commissioners Court and the County Auditor, and limitations upon the amount of such compensation elsewhere provided shall not apply. The contract of employment shall be for a definite term, not extending beyond the term of office of the Assessor and Collector, and shall be made upon sworn application to the Commissioners Court showing the necessity therefor, and shall be subject to approval both as to substance and as to form by the Commissioners Court and by the County Auditor. As amended Acts 1939, 46th Leg., Spec.L., p. 971, § 1.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Art. 7255. 7615, 5164, 4739. Collections, when to begin**

Each Tax Collector shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books, or data upon which to proceed with the business; and, when so ordered by the Commissioners Court of his county, he may post up notices—not less than three (3)—at public places in each voting or justice precinct in his county, at least twenty (20) days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the times and places the same are required to be paid; and said Collector or his Deputy shall attend at such times and places for the purposes aforesaid, and shall remain at each place at least two (2) days. If the Collector from any cause shall fail to meet the taxpayers at the time and place specified in the first notice he shall in like manner give second notice. As amended Acts 1939, 46th Leg., p. 651, § 1.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 7255a. Repealed. Acts 1939, 46th Leg., p. 654, § 2.**

Prior to its repeal this article was Acts 1934, 43rd Leg., 4th C.S., p. 36, ch. 10, §§ 1, 2a, 3, 4.

It provided for discounts if taxes were paid during October, November or De-

ember of the year for which they were assessed, and for payment in full if paid during January. Section 1 was held to be unconstitutional by the Supreme Court.

Section 2 amended art. 7336.

**Art. 7256. Office at county seat; deputy Assessors and Collectors of Taxes in certain towns and cities; bonds; compensation**

Each Assessor and Collector of Taxes shall keep his office at the county seat of his county; and it shall be the duty of every person who failed to attend and to pay his taxes at the times and places in his precinct named by the Assessor and Collector of Taxes, as provided in the preceding Article, to call at the office of the Assessor and Collector of Taxes and pay the same before the last day of December of the same year for which the assessment is made; provided, however, that in all counties containing a city or town, other than the county seat, which has in excess of seven thousand (7,000) inhabitants according to the last

Federal Census, said Assessor and Collector of Taxes, with the consent and approval of the Commissioners' Court, may appoint a Deputy Assessor and Collector of Taxes in such town or city, who shall have the right to collect taxes from all persons who desire to pay their taxes to him, and to issue a valid receipt therefor. Such Deputy shall enter into such bond, payable to the County Judge of the County as the Assessor and Collector of Taxes and Commissioners' Court of the county may require. From each person from whom said Deputy may collect taxes and issue a receipt therefor, said Deputy is authorized to receive a fee of not exceeding twenty-five (25¢) cents when receipt issued covers property taxes, and he shall receive no other compensation for his services; and further provided he shall not retain more than One Thousand Two Hundred (\$1,200.00) Dollars for any one calendar year, and the balance, if any, shall be deposited to the credit of the General Fund of the county. The Assessor and Collector of Taxes shall remain liable on his bonds for all taxes collected by such Deputy and nothing herein shall be construed as a limitation on the liability of the bonds of either the Assessor and Collector of Taxes or such Deputy. Provided further that in all counties having a population of more than seventy thousand (70,000), according to the last preceding Federal Census, and containing one or more cities or towns, other than the county seat, each of which has in excess of one thousand (1,000) inhabitants, according to the last Federal Census, said Assessor and Collector of Taxes with the consent and approval of the Commissioners' Court may appoint a Deputy Assessor and Collector of Taxes in each such city or town, who shall have the right to collect taxes from all persons who desire to pay taxes to him and to issue a valid receipt therefor; each such Deputy shall enter into such bond, payable to the County Judge of the county as the Assessor and Collector of Taxes and Commissioners' Court of the county may require. The salary of each such Deputy Assessor and Collector of Taxes shall be fixed by the Commissioners' Court, and each such Deputy Assessor and Collector of Taxes shall be subject to all the terms and provisions of the law relating to Deputy Assessors and Collectors of Taxes, providing that the salaries fixed by the Commissioners' Court for such Deputies provided for herein, in such counties, shall not exceed Two Hundred (\$200.00) Dollars annually for each one thousand (1,000) population, according to the last preceding Federal Census in each of such cities or towns, and further provided that the salary of either of such Deputy Assessor and Collector of Taxes shall not exceed One Thousand Two Hundred (\$1,200.00) Dollars per year. The Assessor and Collector of Taxes shall remain liable on his bonds for all taxes collected by such Deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the Assessor and Collector of Taxes or such Deputy. As amended Acts 1937, 45th Leg., p. 149, ch. 80, § 1.

Section 2 of the Act of 1937 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 7261. 7619, 5168, 4743 Duties of clerk and collector

1. The Tax Collector shall at the end of each month make like reports to the Commissioners Court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the State. The County Clerk shall likewise, within two (2) days after the presentation of said report by the Collector, examine said report and stubs and certify to their correctness as regards names, dates, and amounts; for which examination and certificate he shall be paid

by the Collector Fifty (50) Cents each month, which amount shall be allowed to the Collector by the Commissioners Court; provided that in counties having a County Auditor the work mentioned in this paragraph shall be done by the County Auditor rather than the County Clerk.

2. The Clerk shall file said report intended for the Commissioners Court, together with the tax receipt stubs, in his office for the next regular meeting of the Commissioners Court.

3. The Tax Collector shall immediately pay over to the County Treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the County Clerk.

4. At the next regular meeting of the Commissioners Court, the Tax Collector shall appear before said Court and make a summarized statement, showing the disposition of all moneys, both of the State and county, collected by him during the previous three (3) months. Said statement must show that all taxes due the State have been promptly remitted to the State Treasury at the end of each month, and all taxes due the county have been paid over promptly to the County Treasurer and shall file proper vouchers and receipts showing same.

5. The Commissioners Court shall examine such statement and vouchers, together with an itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the Tax Collector has properly accounted for all taxes collected, as provided above, the Commissioners Court shall enter an order approving said report, and the order approving same shall be recorded in the minutes.

6. The Tax Collector shall finally adjust and settle his account with the Commissioners Court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing Article in his settlement with the State. As amended Acts 1937, 45th Leg., p. 1326, ch. 491, § 1.

Section 2 of the amendatory Act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

**Art. 7294a. Donation of one-half State ad valorem taxes to counties for five year period; payment over to county treasurer**

Section 1. That for a period of five (5) years, beginning with the taxable year 1940, there is hereby donated and granted by the State of Texas to each respective county of this State, one-half (1/2) of the State ad valorem taxes collected for general revenue purposes upon the property and from the persons in each respective county, except as hereinafter provided, including ad valorem taxes on the rolling stock belonging to railroad companies, which shall be ascertained and apportioned as now provided by law. The taxes hereby donated and granted shall be levied and assessed and collected as now provided by law, except that the Assessor and Collector of Taxes in each respective county shall forward his reports to the Comptroller of Public Accounts as provided by law and shall pay over to the Treasurer of the county one-half (1/2) of all moneys collected by him at the end of each month and during the period covered by this donation, except such amounts as are allowed by law for assessing and collecting the same, and shall forward a duplicate copy of the receipt given him by the County Treasurer for said money to the Comptroller.

**Previous donations as affected by act**

Sec. 2. Nothing in this Act shall amend, alter, modify, or repeal any donation, grant or remission of taxes heretofore made to any county, city, town, village, precinct, political subdivision, or municipal or quasi-municipal corporation.

If the donation, remission or grant to any such entity is as much as one-half (1/2) of the taxes so collected, then this Act shall not be effective as to the taxes collected in such area during the life of such donation, grant or remission heretofore made, but shall be effective after the expiration of such previously made remission, donation, or grant if such expires prior to the expiration of this Act.

If the donation, grant or remission to such entity be less than one-half (1/2) of the taxes, then as to such area this Act shall remit the difference between the remission, grant or donation heretofore made and one-half (1/2) of the taxes collected in such area; and after the expiration of such grant, donation or remission heretofore made, if such expires prior to the expiration of this Act, this Act shall remit one-half (1/2) of the taxes collected in such area for the remainder of the life of this Act.

Where a donation, remission or grant has been heretofore made in an area which is less than the entire county, then this Act shall remit, donate and grant one-half (1/2) of the ad valorem taxes collected in such county outside of such area for the life of this Act.

In counties wherein taxes have been donated or granted heretofore to any authority, and which donation and grant is contingent upon an allocation of a Federal grant, and is not yet effective, such donation and grant by the State heretofore made shall take precedence over the provisions of this Act to the extent of any conflict herewith.

The term, "donation, grant or remission heretofore made" or words of similar import shall include remissions, donations or grants made by the Regular Session of the Forty-sixth Legislature.

**Purposes for which taxes donated may be used**

Sec. 3. The taxes donated and granted by this Act and collected in each respective county shall be used by the County Commissioners' Court of said county for any purpose permitted by and not inconsistent with the Constitution of Texas, including the following purposes: (a) lowering the ad valorem tax rate for county purposes; (b) constructing flood control works and improvements in said county; (c) for improvements to prevent soil erosion and for soil conservation purposes; (d) for irrigation and drainage projects; (e) reforestation and road building; (f) conservation and utilization of water; (g) for projects sponsored by a county in cooperation with the Federal Works Progress Administration or its successors; (h) for the purchase of rights-of-way for public roads; (i) for general relief and charitable purposes; (j) for paying the interest and sinking fund on any outstanding bonded indebtedness of the county; (k) for assisting in the development of navigation; (l) and for any other purpose or purposes not specifically prohibited by the Constitution.

**Commissioners' courts, authority to contract**

Sec. 4. The Commissioners' Courts are further authorized, out of any of the taxes herein donated and granted to their respective counties, to contract with the Governing Board of any River Authority or Water Improvement District, which may include all or any part of such county,

to perform construction works for such River Authority or Water Improvement District, or to set aside any part, or all, of the taxes herein donated and granted to such county, for the use of such River Authority or Water Improvement District in retiring its bonded indebtedness, or for the use of such River Authority or Water Improvement District in carrying out any other purpose or purposes for which such River Authority or Water Improvement District was created.

#### Purpose of act

Sec. 5. The intent and purposes of this Act are to donate to the respective counties of this State that part of the State ad valorem tax donated herein, levied, assessed and collected on the property and from the inhabitants of each respective county to be used by said counties for the purposes hereinbefore set out, and it is hereby declared that the provisions of this Act are authorized under Sections 7 and 8 of Article 11 and Section 59 of Article 16 of the Constitution of the State of Texas. Acts 1939, 46th Leg., p. 668.

Section 6 reads as follows: "If any section, subsection, paragraph, clause, sentence, or word of this Act or the application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining provisions of this Act; and this Legislature hereby declares that it would have passed such remaining portions despite such invalidity."

Section 7 declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act granting and donating to each respective county of this State for a period of five (5) years, beginning with the taxable year 1940, one-half ( $\frac{1}{2}$ ) of the State ad valorem taxes for general revenue purposes not heretofore donated or appropriated to any county, district, city or other political subdivision, collected for general revenue purposes upon the property and from persons in each respective county, including ad valorem taxes on rolling stock belonging to railroad companies; providing that taxes shall be levied, assessed and collected as now provided by law; authorizing the Assessor or Collector of Taxes in each county to pay over to the County Treasurer one-half ( $\frac{1}{2}$ ) of all moneys collected by him at the end of each month during the period of this donation, less amounts allowed by law for assessing and collecting the same; providing that nothing in this Act shall amend, alter, modify or repeal any donation, grant or remission of taxes heretofore made to any county, city, town, village, precinct, political subdivision or municipal or quasi-municipal corporation; providing that if the donation, remission or grant to any such entity is as much as one-half ( $\frac{1}{2}$ ) of the taxes so collected, this Act shall not be effective during the life of such donation, grant or remission heretofore made, but shall be effective after the expiration of such previously made remission, donation or grant; providing

that if the donation, remission or grant of such entity be less than one-half ( $\frac{1}{2}$ ) of the taxes, this Act shall remit the difference between the remission, grant or donation heretofore made and one-half ( $\frac{1}{2}$ ) of the taxes collected in such area; provided that where a donation, remission or grant has been heretofore made in an area covering an area less than an entire county, this Act shall donate and grant one-half ( $\frac{1}{2}$ ) of the taxes collected in the county outside of such area for the life of this Act; providing that where taxes have been donated and granted heretofore to any authority, which donation and grant is contingent upon an allocation of a Federal grant, and is not yet effective, such donation and grant by the state heretofore made shall take precedence over the provisions of this Act to the extent of any conflict herewith; providing that the term, "donation, grant or remission heretofore made" shall include remissions, donations or grants made by the Regular Session of the Forty-sixth Legislature; providing that the taxes donated and granted by this Act shall be used by the County Commissioners' Courts for any purpose not inconsistent with the Constitution of Texas, including lowering the ad valorem tax rate for county purposes, constructing flood control works and improvements in said county, improvements to prevent soil erosion and soil conservation purposes, irrigation and drainage projects, reforestation and road building, conservation and utilization of water, projects sponsored by a county in cooperation with the Federal Works Progress Administration or its successors, purchase of rights-of-way for public roads, general relief and charitable purposes, paying the interest and sinking fund on any outstanding bonded indebtedness of the county, assisting in the development of navigation, and any other purpose or purposes not specifically prohibited by the Constitution; authorizing the Commissioners' Courts to contract with the Governing Boards of any River Authority or Wa-

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ter Improvement District to perform construction works for such River Authority or Water Improvement District; or to set aside any part, or all, of the taxes herein donated and granted to such county, for the use of such River Authority or Water Improvement District in retiring its bonded indebtedness, or carrying out any other purpose for which such District was created; declaring that the provisions of this Act are authorized under Sections 7 and 8 of Article 11, and Section 59 of Article 16, of the Constitution of the State of Texas; providing that if any section, subsection, paragraph, clause, sentence, or word of this Act or the application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining provisions of this Act; and this Legislature hereby declares

that it would have passed such remaining portions despite such invalidity; and declaring an emergency. Acts 1939, 46th Leg., p. 668.

Purchase of land for park authorized

Acts 1939, 46th Leg., Spec.L., p. 856, § 1 reads as follows: "From and after the passage of this Act out of taxes remitted by the State of Texas by virtue of Senate Bill No. 224 of the Regular Session of the Forty-sixth Legislature to counties having a population of not less than forty-eight thousand, five hundred and thirty (48,530) and not more than forty-eight thousand, eight hundred (48,800), the Commissioners Courts of said counties may expend the sum of not more than Eight Thousand Dollars (\$8,000) for the purpose of purchasing and improving land to be designated as a State Park."

Art. 7294b. Donation of state ad valorem taxes to San Jacinto, Trinity, Jasper, Sabine, San Augustine, Shelby, Houston, Tyler, Angelina and Walker counties

Section 1. That from and after the effective date of this Act, the Assessor and Collector of Taxes for each of the Counties of Jasper, Sabine, San Augustine, Shelby, Trinity, Houston, Tyler, Angelina, San Jacinto, and Walker, in this State shall ascertain the number of acres of land purchased or leased by the Federal Government in their respective counties and shall make a report under oath to the Commissioners' Court of such county as to the number of acres of such lands purchased and/or leased by the Federal Government in such county.

Sec. 2. Upon the filing of said report, as provided in Section 1 of this Act, with the Commissioners' Court by the Assessor and Collector of Taxes, the Commissioners' Court of each County above named shall at their regular annual meeting as a Board of Equalization in May of each year fix a valuation upon such lands; the valuation fixed upon such lands shall be the same as fixed by the Equalization Board upon other and similar adjoining lands, for taxation purposes the said Court shall at the same time determine the amount of taxes that said County and precincts and districts has lost as a result of the Federal Government having purchased or leased said land.

Sec. 3. The Assessor and Collector of Taxes of the Counties hereinabove named shall make an itemized report under oath, showing the valuation fixed by the Board of Equalization on such lands and the amount of the county ad valorem taxes that would accrue thereon, as approved by Commissioners' Court, were they not exempt by reason of purchase or lease by the Federal Government, based upon such valuations and fixed at the prevailing rate for the county ad valorem taxes on lands similarly situated. The Assessor and Collector of Taxes shall show in said report the total amount of county ad valorem taxes which would have been assessed against all lands within said county owned or leased by the Federal Government, and shall forward said report to the Comptroller of Public Accounts at Austin.

Sec. 4. The Comptroller of Public Accounts shall upon receipt of such report check the same as to the correctness thereof, and if found correct, shall approve such report. The total amount of county ad valorem taxes which would have been assessed against the lands owned or leased by the Federal Government within such county, as shown by

the report of the County Tax Assessor and Collector, and approved by the Comptroller of Public Accounts, shall be the measure of the amount of the State ad valorem tax to be donated, and granted to such county, as hereinafter provided.

Sec. 5. There is hereby donated, and granted to each of the Counties of Jasper, Sabine, San Augustine, Shelby, Trinity, Houston, Tyler, Angelina, San Jacinto, and Walker, all of the State ad valorem taxes necessary to reimburse said County for the loss sustained by said County or Counties and not to exceed this amount, levied and collected in each respective County for general revenue purposes upon property and from persons in each respective County including the rolling stocks of railroads, or so much of such State ad valorem taxes collected as shall be equal to the amount to be determined in accordance with Section 4 hereof. The taxes hereby donated shall be levied and collected as now provided by law except that the Assessor and Collector of Taxes in each respective County shall forward his report to the State Comptroller of Public Accounts as provided by law, and shall pay over to the Treasurer of each respective County all moneys collected by him at the end of each month, except such amounts as are allowed by law for collecting and assessing the same; and shall forward a duplicate copy of the receipts given him by the County Treasurer for said money to the Comptroller.

Sec. 5-a. The taxes herein donated, and granted to the Counties herein are hereby allocated to the Commissioners' Court of the respective Counties herein named to be used by said Commissioners for the purpose of carrying on the governing activities of the County, public improvements, and discharge of any County or Precinct indebtedness, and may be by said Commissioners' Court allocated to any other political subdivision of the County which has sustained loss as a result of the Federal Government purchasing land within the said political subdivision.

Sec. 6. It is expressly provided, however, in this Act that if and when the Federal Government shall reimburse the Counties named in Section 1 of this Act for the amount of taxes lost to said Counties, this Act upon receipt of such reimbursements shall, as to the County or Counties receiving such reimbursements, become null and void, and of no further force and effect; it being the purpose of this Act to relieve such Counties from loss until reimbursement occurs.

Sec. 7. That if any section, clause, paragraph, or sentence of this Act shall be declared unconstitutional, it is hereby declared to be the intention of the Legislature that the remainder of such Act shall remain in full force and effect. Acts 1939, 46th Leg., Spec.L., p. 987.

Effective 90 days after June 21, 1939, date of adjournment.

Section 8 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act granting aid to San Jacinto, Trinity, Jasper, Sabine, San Augustine, Shelby, Houston, Tyler, Angelina, and Walker Counties, made necessary by reason of the fact that the Government has purchased in said Counties large acreages, reducing the taxable values of such Counties; donated and granting to said Coun-

ties certain State ad valorem taxes; providing duties of the Tax Assessor and Collector in such Counties relative to the same; providing for a Board of Equalization to carry out the provisions of this Act, and to fix valuation on such lands based upon similar adjoining lands; providing for reports of Assessor and Collector of Taxes in such Counties; providing duties of State Comptroller relative thereto; providing that, when Federal Government reimburses said Counties, this Act shall become inoperative; providing saving clause; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 987.



## CHAPTER TEN—DELINQUENT TAXES.

<p>Art. 7328.1. Proceedings in delinquent tax suits [New].</p> <p>7336g. Releasing penalties and interest on certain delinquent taxes [New].</p> <p>7336h. Releasing penalty and interest on taxes in cities of 100,000 to 120,000 on payment by August 15, 1939 [New].</p>	<p>Art. 7345b. Suits for delinquent taxes by taxing units—"tax units" defined [New].</p> <p>7345c. Partial payments of delinquent taxes [New].</p> <p>7345d. Inequitable or confiscatory assessments [New].</p> <p>7345d—1. Application of act to particular taxing bodies [New].</p>
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### Art. 7328.1. Proceedings in delinquent tax suits

Section 1. Hereafter in suits brought to collect delinquent taxes on real property, the petition shall contain substantially the following allegations:

"(a) The State of Texas, hereinafter called plaintiff, brings this suit in behalf of itself, \_\_\_\_\_ County, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor and Collector of Taxes for said county.

"(b) The defendants are \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, who reside in \_\_\_\_\_ County, \_\_\_\_\_, and who own or claim some interest in the hereinafter described real property, which is situated in said \_\_\_\_\_ County.

"(c) That as to each tract separately assessed: That there are delinquent taxes justly due, owing and unpaid against the property described as follows, to-wit: for the following years and in the amounts, to-wit:

YEARS	TO WHOM ASSESSED	AMOUNTS
DELINQUENT	(IF UNKNOWN SO STATE)	TOGETHER WITH PENALTIES, INTEREST AND COSTS PROVIDED BY LAW OR LEGALLY ACCRUING THEREON IN THE TOTAL AMOUNT OF \$_____.

"(d) That all said taxes were authorized by law and each political subdivision in whose behalf this suit is brought was legally constituted and authorized to levy, assess and collect the same and all of said taxes were duly and legally levied and assessed against said real property and the owners thereof (if known) and plaintiff now has and asserts a lien on each tract of real property described and mentioned above to secure the payment of all taxes, penalties, interest and costs due thereon; and all things required by law to be done have been duly and legally performed by the proper officials.

"(e) That all of said above described real estate was, at the time said taxes were assessed, located within the boundaries of the county and each political subdivision in whose behalf this suit is brought.

"(f) The attorney whose name is signed hereto is legally authorized and empowered to institute and prosecute this action on behalf of plaintiff."

#### Personal property taxes

Sec. 2. Such form of petition, insofar as applicable, may be used in suits for the collection of delinquent taxes on personal property, and in any such suit, it shall be sufficient to describe such personal property in such general terms as money, notes, bonds, stocks, credits, stocks of goods, wares, merchandise, fixtures, tools, machinery, equipment, automobiles, household and kitchen furniture and fixtures, beds, dressers,

rugs, stoves, heaters, refrigerators, tables, pianos, radios, pictures, trunks, linens, kitchen utensils, dishes, silverware, jewelry, or any other appropriate general description, and no other or more particular description or designation shall be required as a prerequisite to a suit to obtain a personal judgment for taxes due upon personal property so described.

**Prayer**

Sec. 3. The prayer to any such petition having for its purpose the collection of taxes on both real and personal property shall be sufficient if it contains the following, and if for the collection of either real or personal property taxes without the other, it may be changed so as to make it applicable to the class of property involved, viz.:

“Wherefore plaintiff prays judgment against defendant for the total amount of said taxes, together with all penalties, interest, costs and other charges or expenses that may be or become legally due and owing, together with foreclosure of the tax lien against the above described real estate securing the amount against each tract of real estate above described and for personal judgment against said defendants owning said personal property at the time same was assessed for taxation for the amount shown to be due on it.”

**Verification not required**

Sec. 4. It shall not be necessary that such petition be verified.

**Citation**

Sec. 5. Hereafter in all suits for delinquent taxes, it shall be sufficient if the citation be substantially in the following form with proper changes to make it applicable to both real and personal property or to real or personal only according to the character of taxes sued for, to-wit:

“THE STATE OF TEXAS:  
TO THE SHERIFF OR ANY CONSTABLE OF \_\_\_\_\_ COUNTY,  
GREETING:

“You are hereby commanded to summon \_\_\_\_\_ (by making publication, or by personal service in the manner provided by law): to appear at the next regular term of the \_\_\_\_\_ District Court of \_\_\_\_\_ County, Texas, to be held at the court house thereof in the city of \_\_\_\_\_ on the \_\_\_\_\_ Monday after the \_\_\_\_\_ Monday in \_\_\_\_\_, A. D. 19\_\_\_\_, then and there to answer a petition in a delinquent tax suit filed by the State of Texas suing in its own behalf and also in behalf of \_\_\_\_\_ County, and all political subdivisions of said county whose taxes are assessed and collected by the Assessor and Collector of Taxes of said county, in said Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in a suit numbered \_\_\_\_\_ on the docket of said Court, wherein the State of Texas is plaintiff and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are defendants. Said suit is a suit to collect taxes on the following described real estate (and/or personal property), to-wit: \_\_\_\_\_ for the years and in the amounts as follows:

YEARS DELINQUENT	TO WHOM ASSESSED (IF UNKNOWN SO STATE)	AMOUNTS
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together with penalties, interest, costs and expenses which have accrued, or which may legally accrue, thereon.

(In the event any other taxing unit has intervened at the time such citation is issued, said citation shall also give notice thereof and it will be sufficient, if it contains the following information, to-wit:  
 '\_\_\_\_\_ District filed its petition in intervention in said cause on the \_\_\_\_\_ day of \_\_\_\_\_, 19—, to enforce payment of delinquent taxes on the real estate above described for the years and in the amounts as follows:

YEARS DELINQUENT	TO WHOM ASSESSED (IF UNKNOWN SO STATE)	AMOUNTS
together with penalties, interest, charges and expenses which have accrued or which may legally accrue thereon').		

Plaintiff and/or intervenors also seek the establishment and foreclosure of the lien securing payment of such taxes as provided by law.

Herein fail not, but have you before said Court, on the first day of the next term thereof, this writ, with your return thereon showing you have executed the same.

Witness my hand and official seal at my office in \_\_\_\_\_, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19—.

\_\_\_\_\_  
 Clerk, District Court  
 \_\_\_\_\_ County, Texas."

#### Municipal corporations and political subdivisions

Sec. 6. All of the provisions of this Act simplifying the collection of delinquent State and County taxes, are hereby made available for, and when invoked shall be applied to, the collection of delinquent taxes of all municipal corporations and political subdivisions of this State or any county thereof, authorized to levy and collect taxes. Acts 1939, 46th Leg., p. 664.

Filed without the Governor's signature, May 24, 1939.

Sec. 7 of the act cited to the text provides that: "The provisions of this Act shall be cumulative of and in addition to all other rights and remedies for the collection of delinquent taxes to which taxing units are now entitled; but if any part or portion of this Act be in conflict with any part or portion of any law of this State, the terms and provisions of this Act shall govern, and to the extent of such conflict, such other laws shall be repealed."

Section 8 declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act to simplify proceedings in delinquent tax suits; providing for a simplified form of petition in suits for the collection of delinquent taxes on both real and personal property, and providing for a simplified description of both real and personal property sought to be foreclosed upon.

#### Art. 7336. 7692 Penalty

(a) If any person shall pay, on or before November thirtieth of the year for which their assessment is made, one-half (1/2) of the taxes imposed by law on him or his property, then he shall have until and including the thirtieth day of the succeeding June, within which to pay the other one-half (1/2) of his said taxes without penalty or interest thereon.

If said taxpayer, after paying said one-half (1/2) of his taxes on or before November thirtieth, as hereinbefore provided, shall fail or refuse to pay, on or before June thirtieth next succeeding said November, the other one-half (1/2) of his said taxes, a penalty of eight (8%) per cent of the amount of said unpaid taxes shall accrue thereon.

If any person fails to pay one-half (1/2) of the taxes, imposed by law upon him or his property, on or before the thirtieth day of November of the year for which the assessment is made, then unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to-wit: During the month of February, one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%) per cent; during the month of June, five (5%) per cent; and on and after the first day of July, eight (8%) per cent.

(b) All poll taxes and all ad valorem taxes, unless one-half (1/2) thereof have been paid on or before November thirtieth as hereinabove provided, shall become delinquent if not paid prior to February first of the year next succeeding the year for which the return of the assessment rolls of the county are made to the Comptroller of Public Accounts. If one-half (1/2) of said ad valorem taxes have been paid on or before the thirtieth day of November as herein provided, the remaining one-half (1/2) of such taxes shall be delinquent if not paid before the first day of July of the year next succeeding the year for which the return of the assessment rolls of the county are made to the Comptroller of Public Accounts.

(c) If one-half (1/2) of such ad valorem taxes have been paid on or before November thirtieth of the year in which the same are assessed, the discounts herein provided for shall be effective and shall apply to the last half of the ad valorem taxes if paid ninety (90), sixty (60), and thirty (30) days, respectively, prior to the first day of July, when the same become delinquent as herein provided; but such discount shall not apply to the first half of such taxes if the same have been paid on or before November thirtieth of the year in which such assessment is made.

(d) All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency. All penalties and interest provided for in this Act shall, when collected, be paid to the State, counties, and districts, if any, in proportion to the taxes upon which the penalty and interest are collected. All discounts provided for in this Act shall, when allowed, be charged to the State, counties, and districts, if any, in proportion to the taxes upon which such discounts are allowed.

(e) The Assessor and Collector of Taxes shall, as of the first day of July of each year for which any State, county and district taxes for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding year are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls of said year.

Penalties, interest and costs accrued against any land, lots and/or property need not be entered by the Assessor and Collector of Taxes on said list, but in each and every instance all such penalties, interest and costs shall be and remain a statutory charge with the same force and effect as if entered on said list, and the Assessor and Collector of Taxes shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him.

Said list shall be made in triplicate and presented to the Commissioners' Court for examination and correction, and after being so examined and corrected said list in triplicate shall be approved by said Court. One copy thereof shall be filed with the County Clerk or Auditor, one copy retained and filed by the Assessor and Collector of Taxes;

and one copy forwarded to the Comptroller with the annual settlement report of the Assessor and Collector of Taxes. Said list, as compiled by the Assessor and Collector of Taxes, and corrected by the Commissioners' Court, or the rolls or books on file in the office of the Assessor and Collector of Taxes, shall be prima facie evidence that all the requirements of the law have been complied with by the officers of courts charged with any duty thereunder, as to regularity of listing, assessing, and levying all taxes therein set out, and that the amount assessed against said real estate is a true and correct charge. If the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, but there is a sufficient description of the inventories in the office of the Assessor and Collector of Taxes, then said inventories shall be admissible as evidence of the description of said property.

The Comptroller of Public Accounts shall prescribe suitable forms to be used by the Assessor and Collector of Taxes for noting thereon the payment of taxes in semi-annual installments. He shall also prescribe suitable forms for receipts, reports and for any other purpose necessary in carrying out the provisions of this Act.

This provision is cumulative of all other provisions of the Statutes of the State prescribing the duties of the Comptroller of Public Accounts. As amended Acts 1939, 46th Leg., p. 654, § 3.

For notes to sections 4 to 6 of the act of 1939 cited see historical notes under art. 7057d.

#### Art. 7336g. Releasing penalties and interest on certain delinquent taxes

That all interest and penalties that have accrued on all ad valorem city and independent school district taxes that were delinquent on July 1, 1938, in all cities in this State having a population of not less than two hundred thousand (200,000) nor more than two hundred and fifty thousand (250,000) by the last preceding Federal Census shall be and the same are hereby released; provided said ad valorem city taxes are paid on or before July 1, 1939. This Act shall not apply to penalties and interest on taxes which have been reduced to final judgment. Acts 1939, 46th Leg., Spec.L., p. 969, § 1, as amended Acts 1939, 46th Leg., Spec.L., p. 970, § 1.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

##### Title of Act:

An Act releasing all penalty and interest accrued on ad valorem city and independent school district taxes which were delinquent on June 1, 1938, in all cities in this State having a population of not less than two hundred thousand (200,000)

nor more than two hundred and fifty thousand (250,000) by the last preceding Federal Census, provided said taxes are paid on or before June 1, 1939; exempting from provisions of the Act penalties and interest on taxes which have been reduced to final judgment; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 969.

#### Art. 7336h. Releasing penalty and interest on taxes in cities of 100,000 to 120,000 on payment by August 15, 1939

That all interest and penalties that have accrued on all ad valorem city and independent school district taxes that were delinquent on July 1, 1938, in all cities in this State having a population of not less than one hundred thousand (100,000) nor more than one hundred and twenty thousand (120,000) by the last preceding Federal Census, and in which the city council of such city shall by proper resolution so determine, shall be and the same are hereby released; provided said ad valorem city

taxes are paid on or before August 15, 1939. This Act shall not apply to penalties and interest on taxes which have been reduced to final judgment. Acts 1939, 46th Leg., Spec.L., p. 968.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act releasing all penalty and interest accrued on ad valorem city and independent school district taxes which were delinquent on July 1, 1938, in all cities in this State having a population of not less than one hundred thousand (100,000) nor

more than one hundred and twenty thousand (120,000) by the last preceding Federal Census, and in which the city council shall by proper resolution so determine; providing said taxes are paid on or before August 15, 1939; exempting from provisions of the Act penalties and interest on taxes which have been reduced to final judgment; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 968.

**Art. 7345b. Suits for delinquent taxes by taxing units—"tax units" defined**

Section 1. For all purposes of this Act, the term "taxing units," shall include the State of Texas or any town, city or county in said State, or any corporation or district organized under the laws of the State with authority to levy and collect taxes.

**Impleading other taxing units having tax claims; service on State and other taxing units; waiver of service; notice of suit**

Sec. 2. In any suit hereafter brought by or in behalf of any taxing unit as above defined, for delinquent taxes levied against property by any such taxing unit, the plaintiff may implead as parties defendant any or all other taxing units having delinquent tax claims against such property, or any part thereof, and it shall be the duty of each defendant taxing unit, upon being served with citation as provided by law to appear in said cause and file its claim for delinquent taxes against such property, or any part thereof. It shall be sufficient service upon the State of Texas in any county in such suit to serve citation upon the County Tax Collector charged with the duty of collecting such delinquent taxes due the State and county against such property and it shall be sufficient service upon any other taxing unit to serve citation upon the officer charged with the duty of collecting the taxes of such taxing unit or upon the Mayor, President, or Chairman or the governing body of such taxing unit, or upon the Secretary of such taxing unit. Any taxing unit having any claim for delinquent taxes against such property may waive the issuance and service of citation upon it.

It shall be mandatory upon any such taxing unit so filing such suit or suits, in all cases where all other taxing units are not impleaded to notify all such taxing units not so impleaded of the filing of such suit or suits, such notice to be given by depositing in the United States mail a registered letter addressed to such taxing unit or units giving the name or names of the plaintiff and defendants, the Court where filed, and a short description of the property involved in said suit so that such taxing units not impleaded may have the opportunity to intervene as herein provided.

**Parties; issuance and service of process**

Sec. 3. The laws governing ordinary foreclosure suits in the District Courts of this State shall control the question of parties, issuance, and service of process and other proceedings in tax suits, save and except as herein otherwise provided. The following special provisions shall apply to and govern the question of parties and issuance and service of process in tax suits:

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

(a) When the names of the owner or owners of the property against which foreclosure of the tax lien is sought are unknown to the attorney filing the suit for the plaintiff taxing unit, such unknown owner or owners may be made parties and given notice under the designation "unknown owner or owners of the hereinafter described land"; provided, however, that record owners of the property or any interest therein, including record lien holders, shall not be included in the designation of "unknown owners"; and persons within a period of five (5) years next preceding the filing of the suit, shall not be included in the designation of "unknown owners." When the owner of the property is deceased, and the names of the heirs of such former owner are unknown to the attorney filing the suit for the plaintiff taxing unit, such unknown heirs may be made parties and given notice under the designation of "unknown heirs" of such deceased person, subject to the same provisions and restrictions as above set out with reference to making parties under the designation of "unknown owner or owners."

(b) Where any defendant in such suit is a resident of the State of Texas and his residence is known to the attorney filing said suit, process shall issue for service on such defendant and be served and returned as directed by Articles 2021 to 2034, inclusive, of the 1925 Revised Civil Statutes of the State of Texas. Provided, however, that a statement of the nature of the cause of action conforming to the requirement for notices by publication as hereinafter set forth in paragraph (d) below shall be sufficient in such citation, when required.

(c) Where any defendant in such suit is absent from the State or is a nonresident of the State, it shall be sufficient to serve said defendant with notice accompanied by a certified copy of plaintiff's petition as provided in Article 2037 of the 1925 Revised Civil Statutes of the State of Texas, and it shall be sufficient to serve such notice in the manner provided in Article 2038 of the 1925 Revised Civil Statutes of the State of Texas, or in the alternative, service may be had on such defendant by publication as provided in Section 3(d) hereof.

(d) Where any defendant in such suit is a nonresident of the State, where the names of the owner or owners of said property are unknown to the attorney filing the suit for the plaintiff taxing unit, where the residence of any defendant is unknown to such attorney, and where the names of the defendant heirs of any deceased person are unknown to such attorney, and such facts are recited in the petition, service of notice by publication is hereby authorized in each and all of such cases, and all defendants of classes enumerated just above may be joined in one notice; and where service is had by publication, such notice shall be directed to the defendants by name, or by designation as hereinabove provided, and shall be issued and signed by the clerk. Such notices for publication shall be sufficient if they contain the number and style of the case, the names of all parties plaintiff, intervenors and defendants, the Court in which the suit is pending and when to appear and defend the suit, which shall be the first day of the next term of the Court in which the suit is filed; and, as a statement of the nature of the suit, such notices shall show the amount of the taxes alleged to be due each plaintiff and intervenor, exclusive of interest, penalties, and costs, and shall recite that all interest, penalties, and costs allowed by law are included in the suit, a brief general description of the property, and shall also contain, in substance, a recitation that each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein. Such notices shall be published in some newspaper published

in the county in which the property is located one time a week for two (2) consecutive weeks, the first publication to be not less than fourteen (14) days prior to the first day of the term of Court to which returnable; and the affidavit of the editor or publisher of the newspaper giving the dates of publication, together with a printed copy of the notice as published, attached to such notice, shall constitute sufficient proof of due publication when returned and filed in Court. If there is no newspaper published in the county, then said publication may be made in a newspaper in an adjoining county. A maximum fee of Two and One-half (2½) Cents per line (6 words to count for a line) for such insertion may be taxed for publishing said notice. If the publication of such notice cannot be had for such fee, then service of the notice herein provided may be made by posting a copy at the Courthouse door of the county in which the suit is pending, such notice to be posted at least fourteen (14) days prior to the first day of the term of Court to which it is returnable. When notice is given as herein provided it shall be sufficient, and no other form of citation or notice shall be necessary on such defendants.

(e) Any process authorized by this Act may issue jointly in behalf of all taxing units who are plaintiffs and/or intervenors in any suit. After citation and/or notice has been given on behalf of any plaintiff and/or intervenor taxing units, the Court shall have jurisdiction to hear and determine the tax claims of all taxing units who are parties plaintiff, intervenor or defendant at the time such process is issued; and any taxing unit that has been made a party defendant to such suit may by answer or intervention set up and have determined its tax claims without the necessity of further citation or notice to any parties to such suit. As amended Acts 1939, 46th Leg., p. 661, § 1.

#### **Pleading and answering to claims filed**

Sec. 4. Each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein, and the citation upon each defendant shall so recite.

#### **Proof and finding of reasonable and fair value; "adjudged value," defined; burden of proof**

Sec. 5. Upon the trial of said cause the Court shall hear evidence upon the reasonable fair value of the property, and shall incorporate in its judgment a finding of the reasonable fair value thereof, in bulk or in parcels, either or both, as the Court may deem proper, which reasonable fair value so found by the Court is hereafter sometimes styled "adjudged value", which "adjudged value" shall be the value as of the date of the trial and shall not necessarily be the value at the time the assessment of the taxes was made; provided, that the burden of proof shall be on the owner or owners of such property in establishing the "fair value" or adjudged value as provided in this section and, provided further that this section shall only apply to taxes which are delinquent for the year 1935 and prior years.

#### **Costs and expenses; approval by court**

Sec. 6. All court costs, including costs of serving process, in any suit hereafter brought by or in behalf of any taxing units for delinquent taxes in which suits all other taxing units having a delinquent tax claim against such property of any part thereof, have been impleaded, together with all expenses of foreclosure sale and such reasonable attorney's fees as may be incurred by the interpleaded or intervening taxing units, not exceeding ten per cent (10%) of the amount sued



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

for, such attorney's fees to be subject to the approval of the court together with such reasonable expenses as the taxing units may incur in procuring data and information as to the name, identity and location of necessary parties and in procuring necessary legal descriptions of the property, shall be chargeable as court costs.

**Order of sale on foreclosure; sale**

Sec. 7. In the case of foreclosure, an order of sale shall issue, and, except as herein otherwise provided, the land shall be sold thereunder as in other cases of foreclosure of tax liens.

**Sale for less than adjudged value or aggregate of judgments in suit to party other than taxing unit prohibited; distribution of proceeds**

Sec. 8. No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly, or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgments against said property, shall be paid to the parties legally entitled to such excess.

**Purchasing taxing unit to hold property for itself and other taxing units adjudged to have liens; sale by purchasing taxing unit; proceeds; failure to sell within 12 months**

Sec. 9. If the property be sold to any taxing unit which is a party to the judgment under decree of court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same, and such property shall not be sold by the taxing unit purchasing same for less than the adjudged value thereof or the amount of the judgments against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment have been found to have tax liens against such property; and when such property is sold by the taxing unit purchasing same, the proceeds thereof shall be received by it for account of itself and all other said taxing units adjudged in said suit to have a tax lien against such property, and after paying all costs and expenses, shall be distributed among such taxing units pro rata and in proportion to the amount of their tax liens against such property as established in said judgment. Consent in behalf of the State of Texas under this Section of this Act may be given by the County Tax Collector of the county in which the property is located.

Provided that if sale has not been made by such purchasing taxing unit before six months after the redemption period provided in Section

12 hereof has expired, it shall thereafter be the duty of the Sheriff upon written request from any taxing unit who has obtained a judgment in said suit, to sell said property at public outcry to the highest bidder for cash at the principal entrance of the courthouse in the county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution. Said notice shall contain a legal description of the land to be sold, the date of its purchase by such purchasing taxing unit, the price for which the land was sold to such taxing unit, that it will be sold at public outcry to the highest bidder for cash, and the date and place of sale. All sales contemplated herein shall be made in the manner prescribed for the sale of real estate under execution, except that they must be made between the hours of 2 o'clock P. M. and 4 o'clock P. M., and the Sheriff is hereby authorized, and it is hereby made his duty, to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in the event said bid or bids are received, the land shall be readvertised and offered for sale as provided for herein, but the acceptance by the Sheriff of the bid shall be conclusive and binding on the question of the sufficiency of the bid and no action shall be sustained in any Court of this State to set aside said sale on the grounds of the insufficiency of the amount bid and accepted. Nothing herein shall be construed as prohibiting any taxing unit participating in said judgment, from instituting an action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. The Sheriff shall apply the proceeds from such sale, first, to the payment of all costs in said unit and all costs and expenses of sale and resale and all attorney's fees and reasonable expenses taxed as costs by the Court in said suit and shall distribute the balance among the taxing units participating in said original judgment pro rata and in proportion to the amount of their tax liens against such property as established in said judgment.

#### **Title of purchaser**

Sec. 10. The purchaser of property sold for taxes in such foreclosure suit shall take title free and clear of all liens and claims for taxes against such property delinquent at the time of judgment in said suit to any taxing unit which was a party to said suit or which had been served with citation in said suit as required by this Act.

#### **Suits entitled to precedence**

Sec. 11. Suits for delinquent taxes shall have precedence and priority in the District Courts of this State, and in the Appellate Courts thereof.

#### **Judgment; redemption, right to**

Sec. 12. In all suits heretofore or hereafter filed to collect delinquent taxes against property, judgment in said suit shall provide for issuance of writ of possession within twenty (20) days after the period of redemption shall have expired to the purchaser at foreclosure sale or his assigns; but whenever land is sold under judgment in such suit for taxes, the owner of such property, or anyone having an interest therein, or their heirs, assigns or legal representatives, may, within two (2) years from the date of such sale, have the right to redeem said property on the following basis, to-wit: (1) within the first year of the redemption period, upon the payment of the amount bid for the property by the purchaser at such sale, including a One (\$1.00) Dollar tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon, plus twenty-five per cent (25%) of the aggregate total; (2) within the last year of the redemption period, upon the payment of the amount bid

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for the property by the purchaser at such sale, including a One (\$1.00) Dollar tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon, plus fifty per cent (50%) of the aggregate total.

In addition to redeeming direct from the purchaser as aforesaid, redemption may also be made upon the basis hereinabove defined, as provided in Articles 7284 and 7285 of the Revised Civil Statutes of Texas of 1925.

**Provisions of Act cumulative; effect of conflict with other acts**

Sec. 13. The provisions of this Act shall be cumulative of and in addition to all other rights and remedies to which any taxing unit may be entitled, but as to any proceeding brought under this Act, if any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern as to such proceeding. The provisions of Chapter 10, Title 122 of the Revised Civil Statutes of 1925 shall govern suits brought under this Act except as herein provided. Acts 1937, 45th Leg., p. 1494-a, ch. 506.

Section 14 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act defining the term "taxing unit," and providing that in any suit brought by, or in behalf of, any taxing unit for delinquent taxes other taxing units having delinquent tax claims against the property, may be impleaded or may intervene; and providing for the nature, character and contents of citation upon defendants, and service thereof; and providing for the adjudication of the reasonable fair value of the property; and providing for court costs, expenses of sale and expenses in procuring necessary data and information for filing such suits; and providing for procedure in such suits; and providing for citation and service upon absent, non-resident and unknown defendants; and providing for publication notice; and providing that if property be sold under decree in such a suit to any taxing unit which is a party to said suit, title to same shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units in said suit, in proportion to the amount of tax liens held by said taxing units against such property as established by judgment in said suit; and providing the manner and price at which such property may be sold by the taxing unit purchasing same; and provid-

ing for the manner of distributing the proceeds of such property when sold; and providing the manner and price at which property may be sold for taxes under decree in such suit to the owner, directly or indirectly, or to anyone having an interest therein, or to any party other than a taxing unit which is a party thereto; providing for the distribution of the proceeds of such sale; and providing that the purchaser of property sold for taxes in such suit should take title clear of all liens or claims for taxes delinquent at the time of judgment and belonging to any taxing unit which was a party to said suit or had been served therein; and providing for precedence and priority of such delinquent tax suits in the District and Appellate Courts; and providing for issuance of writ of possession and redemption of property sold for taxes; and in case the governing body of any taxing unit shall fail within sixty (60) days after taxes became delinquent to sue for collection, and in case such delinquent taxes were levied to meet requirements of outstanding obligations of such taxing unit, providing certain remedies for holders of such obligations; and providing that if any part or portion of the Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern; and declaring an emergency. [Acts 1937, 45th Leg., p. 1494-a, ch. 506.]

**Art. 7345c. Partial payments of delinquent taxes**

Section 1. On and after July 1, 1937, taxpayers owing delinquent State and county taxes, covering both real estate and personal property, shall be permitted to pay such delinquent taxes in partial payments under a system which shall be hereinafter provided for.

**Partial payment or installment account system to be created**

Sec. 2. The Assessor and Collector of Taxes of each county of this State shall create and establish a partial payment or installment ac-

count system whereby all delinquent taxpayers desiring to pay their taxes under the provisions of this Act may do so.

**Number of installments; time of payment**

Sec. 3. All payments received by the Assessor and Collector of Taxes under the provisions of this Act shall be due and payable within twenty (20) months from the date of July 1, 1937, such payments being due and payable in ten (10) equal installments, provided that the first payment of such partial payments shall be made on or before September 1, 1937.

**Default in paying installments; suit for collection**

Sec. 4. If after paying one or more installments, the delinquent taxpayer pays no further installment or installments for a period of four (4) months, all of the remaining installments of said delinquent taxes shall become due and payable, and it will thereupon become the duty of the County Attorney or District Attorney or Criminal District Attorney in counties where there is no County Attorney to institute suit for the collection thereof.

**Minimum payments and accounts**

Sec. 5. The Assessor and Collector of Taxes shall accept partial payments made by a taxpayer in any sum, provided, however, that no payment shall be less than One Dollar (\$1), and that no partial payment account will be opened for delinquent taxes which total less than Ten Dollars (\$10).

**Application of payments; redemption receipts**

Sec. 6. When any delinquent taxpayer shall have paid into such installment account a sum of money sufficient to pay the taxes owed by him for the earliest unpaid year upon one of the lots or tracts of land owned by him, together with the amount of penalty and interest then provided by law, the Assessor and Collector of Taxes shall withdraw from the special fund hereinafter provided for such sum and shall apply the same upon payment of said delinquent taxes, penalty, and interest, if any, and issue to such taxpayer a redemption receipt therefor. Thereafter such taxpayer may continue to make equal monthly installments into such trust fund until all of the delinquent taxes owed by him shall have been paid.

**Title to payments**

Sec. 7. All of such installments paid by such delinquent taxpayers shall immediately become the property of the State of Texas and the respective county wherein the assessed property is situated or located, in such proportion as is necessary to satisfy the taxes, penalty, and interest delinquent and due to each, and the taxpayer shall in no event be entitled to a refund thereof, or to any portion of the same.

**Sale of property**

Sec. 8. In the event the taxpayer for whom the installment or partial payment account was originally opened sells the particular property upon which said installments are to be applied, the Assessor and Collector of Taxes may, in his discretion, immediately apply upon the taxes, penalty, and interest delinquent upon such property, the amount of installments already received.

**Payments to be in escrow**

Sec. 9. All funds or moneys covering delinquent State and County taxes, received by the Assessor and Collector of Taxes under the provisions of this Act shall immediately be placed in a special account with the County Treasurer of the respective county involved, and shall be held in escrow in such account until such time as the Assessor and Collector of Taxes shall notify said County Treasurer that at least one year's taxes have been paid on an individual account, thereby permitting said County Treasurer to remit to the Assessor and Collector of Taxes the amount or amounts so specified, said funds then to be distributed to the State and county proportionately in the same manner as all other collections.

**Books, records, and accounts subject to examination**

Sec. 10. The books, records, and accounts maintained by the Assessor and Collector of Taxes for the purpose of carrying out the provisions of this Act shall at all reasonable times be subject to examination by the State Comptroller of Public Accounts and the respective County Auditors in their official capacity, in the same manner as all other collection systems now provided for by law.

**Act inapplicable to certain taxes**

Sec. 11. The provisions of this bill shall not apply to ad valorem or personal property taxes of any city, town, or independent school district, or any political subdivision of the State, unless and until the governing body thereof shall pass an ordinance or resolution providing that the provisions of this bill shall apply to ad valorem taxes of such city, town, or independent school district, or any political subdivision of the State.

**Comptroller of Public Accounts to prescribe forms**

Sec. 12. The Comptroller of Public Accounts shall prescribe suitable forms to be used by the Assessor and Collector of Taxes for noting thereon the payment of taxes in installments. He shall also prescribe suitable forms for passbooks, receipts, reports, and for any other purpose necessary in carrying out the provisions of this Act.

**Pending suits unaffected**

Sec. 12-a. The provisions of this Act shall not affect any delinquent tax suits filed in courts of competent jurisdiction before the effective date of this Act in the counties or other political subdivisions availing themselves of the provisions of this Act.

**Repeal of conflicting laws**

Sec. 13. All laws and parts of laws in conflict with the provisions of this Act are hereby expressly repealed in so far as the same are in conflict with the provisions hereof.

**Partial invalidity**

Sec. 14. It is further provided that in case any section, clause, sentence, paragraph, or part of this Act shall for any purpose or reason be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the section, clause, sentence, paragraph, or part thereof directly involved in the controversy.

in which said judgment shall have been rendered. Acts 1937, 45th Leg., p. 923, ch. 442.

Section 15 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that on and after July 1, 1937, delinquent taxpayers shall be permitted to pay such taxes in partial payments; providing for the creation and establishment of a system whereby such payments may be made in this manner; providing for a twenty-month time limit in the payment of delinquent taxes under this system and that the first payment shall be made on or before September 1, 1937; providing for the institution of suit by the County Attorney or District Attorney or Criminal District Attorney in counties where there is no County Attorney against such delinquent taxpayers upon default in making such payments under this system; providing that no such payments shall be received by the Assessor and Collector of Taxes, which payments total less than One Dollar (\$1), and further, that accounts for less than Ten Dollars (\$10) will not be opened; providing that when the sum of money sufficient to pay the earliest unpaid year of delinquent taxes owed by such taxpayer shall have been paid, such amount shall then be applied upon such taxes, and a redemption receipt issued therefor; providing that all of the funds received under the provisions of this Act shall immediately become the property of the State of Texas and the respective county involved, and that no refunds shall be allowed; providing that the Assessor and

Collector of Taxes may, in his discretion, allow the amount or amounts already paid into such partial payment account to be applied upon such taxes in the event the property covered is sold or transferred; providing for the creation of a special account with the County Treasurer of the respective counties, in which funds obtained under this system may be deposited until sufficient amount is collected to pay at least one year's taxes, at which time such amount shall be remitted by the County Treasurer to the Assessor and Collector of Taxes for proportionate distribution in the regular manner as provided by law; providing that the books, records, and accounts maintained by the Assessor and Collector of Taxes for the purpose of carrying out the provisions of this Act shall be subject to examination by the State Comptroller of Public Accounts and also by the County Auditor; providing for the manner by which said provisions would apply to cities, towns, and independent school districts, or any political subdivision of the State; prescribing suitable forms, etc., to be used in carrying out the provisions of this Act; providing the provisions of this Act shall not affect any delinquent tax suits filed in courts of competent jurisdiction before the effective date of this Act; repealing all laws and parts of laws in conflict; providing that if any clause, section, sentence, paragraph, or part of this Act shall be held invalid, such invalidity shall not invalidate the remainder; and declaring an emergency. [Acts 1937, 45th Leg., p. 923, ch. 442.]

**Art. 7345d. Inequitable or confiscatory assessments**

In all cases where property appearing on the tax rolls, whether rendered or unrendered, current or delinquent, appears to have been assessed at a valuation greater than that placed upon other property in such locality of similar value, or out of proportion to the taxable value of such property; or where by reason of the depreciation in the value of such property an adjustment of assessed value would be equitable and expedient; or where by reason of long delinquency, the accumulated delinquent taxes, with penalties, interest, and cost aggregate such amount as to make their collection inequitable or confiscatory, the Commissioners Court of the county in which such property is situated, upon the application of the owner thereof or his duly authorized agent, shall have the power to reopen and reconsider the original assessments. In all such cases, the Commissioners Court shall hear testimony from competent and disinterested witnesses, and may make such personal and independent investigation as may seem necessary and expedient. If, after such investigation it shall appear to the Commissioners Court that such assessments were discriminatory, or out of proportion to the taxable value of the property, or that by reason of the depreciation of value of same, or that the enforced collection of the accumulated delinquent taxes, penalties, interest, and costs would be inequitable or confiscatory, the Commissioners Court may, under its power as a Board of Equalization, make such adjustments as to assessed values of such property as it may determine

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

to be equitable and just. And any previous fixing of values of such property for the years involved shall not be "res adjudicata" as to the particular case.

Provided, that the State Comptroller shall be furnished with a certified copy of any order passed in pursuance hereof, as shall likewise the County Assessor-Collector of Taxes, who shall make the necessary correction of his rolls. Provided further, that nothing herein shall be construed as authorizing the Commissioners Court to remit any penalty, interest, or costs that have accrued, but all such penalty, interest, and costs shall be collected on the adjusted assessment as may be authorized by existing law. As added Acts 1939, 46th Leg., p. 659, § 1.

Section 2 of this Act is published as art. 7345d-1; section 3 provides that: "Where not in conflict with existing law, this Act shall be cumulative; but all laws and

parts of laws in conflict herewith are hereby repealed."

Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 7345d—1. Application of act to particular taxing bodies

Incorporated cities and towns, independent school districts having their own Assessor-Collector and Boards of Equalization, irrigation and water improvement districts, and all other governmental agencies having the power to levy and collect taxes, shall have the right by ordinance, order or resolution properly enacted, passed, and entered to avail themselves of this law. Provided, that in such cases, the governing body of such taxing unit, or its duly constituted Board of Equalization, shall perform the functions hereinabove conferred on the Commissioners Court. Acts 1939, 46th Leg., p. 659, § 2.

For notes to sections 3, 4 of the act of 1939 cited, see historical notes under art. 7345d, ante.

### TITLE 123—TIMBER

Art.

7363a. Bill of sale required in buying logs or pulp wood—verified statement respecting staves or cross ties—penalty for violation [New].

#### Art. 7363a. Bill of sale required in buying logs or pulp wood—verified statement respecting staves or cross ties—penalty for violation

Section 1. Every person, firm, partnership or corporation shall require, before purchasing any trees or timber in the form of logs or pulp wood, a bill of sale therefor to be executed and acknowledged by the seller, in the manner required by law for registration thereof, and such bill of sale shall contain the name and address of such seller and purchaser, a description of the survey or tract of land from which such logs or pulp wood were cut, the number of logs or pulp wood, and the markings, if any, thereon; provided further, that any notarial, filing fees, or other expenses in connection with such bill of sale, shall be assumed and paid by the purchaser; provided, however, that a purchaser of staves or cross ties not securing a bill of sale or deed to same shall on or before the tenth day of each succeeding month from date of purchase file with the County Clerk of the county in which the land from which said staves or cross ties were cut, is situated, a verified statement containing among other things the name and address of the seller and

purchaser, a description of the survey or tract of land from which such staves or cross ties, or any of them, were cut, the number of staves or cross ties and the markings, if any, thereon contained, which verified statement shall be kept by the County Clerk as a record for public inspection for a period of not less than two (2) years, and for which a filing fee not exceeding Ten (10¢) Cents shall be charged. The provisions of this Act shall not apply to the sale of finished lumber or cedar staves, nor shall the same apply to wood or posts.

Sec. 2. Every seller and purchaser who fails to see that such bill of sale as above provided for is given in any such sale, or any purchaser not securing a bill of sale who fails to file the statement as provided for hereinabove, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not to exceed One Hundred (\$100.00) Dollars, or imprisonment of not more than thirty (30) days in jail in the county jail, or both. Acts 1939, 46th Leg., p. 243.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to require all purchasers of trees and timber in the form of logs or pulp wood, to obtain a bill of sale therefor from the seller; providing for payment of notarial and filing fees; providing that all purchasers of staves or cross ties not securing a bill of sale or deed to same from

the seller shall file a verified statement with the County Clerk of the county in which the land from which said staves or cross ties were cut is situated, containing number and description of said staves or cross ties; providing that the provisions of this Act shall not apply to the sale of finished lumber, cedar staves, posts, or wood; providing what shall be contained in such bill of sale; providing penalties for violation of this Act, and declaring an emergency. Acts 1939, 46th Leg., p. 243.



## TITLE 128—WATER

### I. IRRIGATION AND WATER RIGHTS

#### CHAPTER ONE—USE OF STATE WATER

##### 1. PUBLIC RIGHTS

Art.

7466e—1. Rio Grande Compact [New].

Art.

7466f—1. Alamogordo Reservoir agreement with New Mexico ratified [New].

#### 1. PUBLIC RIGHTS

##### Art. 7466e—1. Rio Grande Compact

Section 1. The Rio Grande Compact entered into and signed at Santa Fe, New Mexico, on March 18, 1938, by M. C. Hinderlider, Commissioner for the State of Colorado, Thos. M. McClure, Commissioner for the State of New Mexico, and Frank B. Clayton, Commissioner for the State of Texas, and approved by S. O. Harper, Commissioner representing the United States of America, an original copy of which has been deposited in the office of the Secretary of State for the State of Texas, is hereby, in all respects, ratified and confirmed; said Compact being as follows:

#### RIO GRANDE COMPACT

The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes, and to that end, through their respective Governors, have named as their respective Commissioners:

For the State of Colorado—M. C. Hinderlider

For the State of New Mexico—Thomas M. McClure

For the State of Texas—Frank B. Clayton

who, after negotiations participated in by S. O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following Articles, to wit:

#### ARTICLE I.

(a) The State of Colorado, the State of New Mexico, the State of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

(b) "The Commission" means the agency created by this Compact for the administration thereof.

(c) The term "Rio Grande Basin" means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado.

(d) The "Closed Basin" means that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain Diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande Basin, exclusive of the Closed Basin.

(g) "Annual Debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual Credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued Debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued Credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project Storage" is the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande Project, but not more than a total of two million, six hundred and thirty-eight thousand, eight hundred and sixty (2,638,860) acre-feet.

(l) "Usable Water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) "Credit Water" is that amount of water in project storage which is equal to the accrued credit of Colorado or New Mexico or both.

(n) "Unfilled Capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual Release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual Spill" is all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical Spill" is the time in any year at which usable water would have spilled from project storage if seven hundred and ninety thousand (790,000) acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs; in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this Compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

## ARTICLE II.

The Commission shall cause to be maintained and operated a stream gaging station equipped with an automatic water stage recorder at each of the following points, to wit:

(a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis Valley;

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- (b) On the Conejos River near Mogote;
- (c) On the Los Pinos River near Ortiz;
- (d) On the San Antonio River at Ortiz;
- (e) On the Conejos River at its mouths near Los Sauces;
- (f) On the Rio Grande near Lobatos;
- (g) On the Rio Chama below El Vado Reservoir;
- (h) On the Rio Grande at Otowi Bridge near San Ildefonso;
- (i) On the Rio Grande near San Acacia;
- (j) On the Rio Grande at San Marcial;
- (k) On the Rio Grande below Elephant Butte Reservoir;
- (l) On the Rio Grande below Caballo Reservoir.

Similar gaging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the Compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gaging stations shall be equipped, maintained, and operated by the Commission directly or in cooperation with an appropriate Federal or State agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

### ARTICLE III.

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line, measured at or near Lobatos, in each calendar year, shall be ten thousand (10,000) acre-feet less than the sum of those quantities set forth in the two (2) following tabulations of relationship, which correspond to the quantities at the upper index stations:

#### Discharge of Conejos River

Quantities in thousands of acre-feet

Conejos Index Supply (1)	Conejos River at Mouths (2)
100	0
150	20
200	45
250	75
300	109
350	147
400	188
450	232
500	278
550	326
600	376
650	426
700	476

Intermediate quantities shall be computed by proportional parts.

(1) Conejos Index Supply is the natural flow of Conejos River at the U. S. G. S. gaging station near Mogote during the calendar year, plus the natural flow of Los Pinos River at the U. S. G. S. gaging station near Ortiz and the natural flow of San Antonio River at the U. S. G. S.

gaging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos River at mouths is the combined discharge of branches of this River at the U. S. G. S. gaging stations near Los Sauces during the calendar year.

Discharge of Rio Grande exclusive of Conejos River

Quantities in thousands of acre-feet

Rio Grande at Del Norte (3)	Rio Grande at Lobatos less Conejos at Mouths (4)
200	60
250	65
300	75
350	86
400	98
450	112
500	127
550	144
600	162
650	182
700	204
750	229
800	257
850	292
900	335
950	380
1,000	430
1,100	540
1,200	640
1,300	740
1,400	840

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U. S. G. S. gaging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at mouths is the total flow of the Rio Grande at the U. S. G. S. gaging station near Lobatos, less the discharge of Conejos River at its mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging station; (b) any new or increased depletion of the runoff above inflow index gaging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the Closed Basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five (45) per cent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred and fifty (350) parts per million.

ARTICLE IV.

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August, and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

Discharge of Rio Grande at Otowi Bridge and at San Marcial exclusive of July, August, and September

Quantities in thousands of acre-feet

Otowi Index Supply (5)	San Marcial Index Supply (6)
100	0
200	65
300	141
400	219
500	300
600	383
700	469
800	557
900	648
1000	742
1100	839
1200	939
1300	1042
1400	1148
1500	1257
1600	1370
1700	1489
1800	1608
1900	1730
2000	1856
2100	1985
2200	2117
2300	2253

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U. S. G. S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August, and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) San Marcial Index Supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August, and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August, and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte

Reservoir, to the end that the records at these three (3) stations may be correlated.

#### ARTICLE V.

If at any time it should be the unanimous finding and determination of the Commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the stream gaging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the Commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

#### ARTICLE VI.

Commencing with the year following the effective date of this Compact, all credits and debts of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed one hundred thousand (100,000) acre-feet, except as either or both may be caused by holdover storage water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed two hundred thousand (200,000) acre-feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debit in any one year than the sum of one hundred and fifty thousand (150,000) acre-feet and all gains in the quantity of water in storage in such year.

The Commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of one hundred and fifty thousand (150,000) acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the Commissioners for the States having accrued credits authorize the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

#### ARTICLE VII.

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than four hundred thousand (400,000) acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this Compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of seven hundred and ninety thousand (790,000) acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the State or States so relinquishing shall be entitled to store water in the amount of the water so relinquished.

#### ARTICLE VIII.

During the month of January of any year the Commissioner for Texas may demand of Colorado and New Mexico, and the Commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to six hundred thousand (600,000) acre-feet by March 1st and to maintain this quantity in storage until April 30th, to the end that a normal release of seven hundred and ninety thousand (790,000) acre-feet may be made from project storage in that year.

#### ARTICLE IX.

Colorado agrees with New Mexico that in event the United States or the State of New Mexico decides to construct the necessary works for diverting the waters of the San Juan River, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan River, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan River, or its tributaries, are protected.

## ARTICLE X.

In the event water from another drainage basin shall be imported into the Rio Grande Basin by the United States or Colorado or New Mexico, or any of them jointly, the State having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

## ARTICLE XI.

New Mexico and Texas agree that upon the effective date of this Compact all controversies between said States relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory State to the Supreme Court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory State to the injury of another. Nothing herein shall be construed as an admission by any signatory State that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

## ARTICLE XII.

To administer the provisions of this Compact there shall be constituted a Commission composed of one representative from each State, to be known as the Rio Grande Compact Commission. The State Engineer of Colorado shall be ex-officio the Rio Grande Compact Commissioner for Colorado. The State Engineer of New Mexico shall be ex-officio the Rio Grande Compact Commissioner for New Mexico. The Rio Grande Compact Commissioner for Texas shall be appointed by the Governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such Commission, and such Representative of the United States, if so designated by the President, shall act as Chairman of the Commission without vote.

The salaries and personal expenses of the Rio Grande Compact Commissioners for the three (3) States shall be paid by their respective States, and all other expenses incident to the administration of this Compact, not borne by the United States, shall be borne equally by the three (3) States.

In addition to the powers and duties hereinbefore specifically conferred upon such Commission and the Members thereof, the jurisdiction of such Commission shall extend only to the collection, correlation, and presentation of factual data and the maintenance of records having a bearing upon the administration of this Compact, and, by unanimous action, to the making of recommendations to the respective States upon matters connected with the administration of this Compact. In connection therewith, the Commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective States. Annual reports compiled for each calendar year shall be made by the Commission and transmitted to the Governors of the signatory States on or before March 1st following the year covered by the report. The Commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any Court or tribunal which may be called upon to interpret or enforce this Compact.

## ARTICLE XIII.

At the expiration of every five-year period after the effective date of this Compact, the Commission may, by unanimous consent, review



any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the Compact is founded, and shall meet for the consideration of such questions on the request of any member of the Commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Commissioners, and until any changes in this Compact are ratified by the Legislatures of the respective States and consented to by the Congress, in the same manner as this Compact is required to be ratified to become effective.

#### ARTICLE XIV.

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

#### ARTICLE XV.

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this Compact and none of the signatory States admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

#### ARTICLE XVI.

Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian Tribes, or as impairing the Rights of the Indian Tribes.

#### ARTICLE XVII.

This Compact shall become effective when ratified by the Legislatures of each of the signatory States and consented to by the Congress of the United States. Notice of ratification shall be given by the Governor of each State to the Governors of the other States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of each of the signatory States of the consent of the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Sante Fe, in the State of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

(Signed) M. C. Hinderlider  
 (Signed) Thomas M. McClure  
 (Signed) Frank B. Clayton

Approved:

(Signed) S. O. Harper

Sec. 2. The Governor shall, with the advice and consent of the Senate, appoint a Commissioner, who shall represent the State of Texas on the Commission provided for by Article XII of the Rio Grande Compact and who shall be charged with the administration of the provisions of said Compact, and who shall have the powers and discharge the duties

prescribed by the terms of said Compact. Such Commissioner shall hold office for two (2) years and until his successor is appointed and qualified. He shall take oath of office as prescribed by the Constitution and, in addition thereto, he shall take oath to faithfully perform the duties incumbent upon him as such Commissioner. He shall receive from time to time such compensation as may be allowed by the Legislature, and, until otherwise provided by law, he shall receive a salary of Two Hundred and Fifty Dollars (\$250) a month. He shall be allowed his actual expenses when traveling in the discharge of his duties, on his sworn account showing such expenses in detail. In conjunction with the other members of said Commission, he may appoint such engineering and clerical aid as may be authorized by the Legislature of Texas and he may incur necessary office expenses and other expenses incident to the proper performance of his duties and the proper administration of the provisions of the Rio Grande Compact. But such Commissioner shall incur no financial obligation on behalf of the State of Texas until the Legislature shall have provided and appropriated money therefor.

Sec. 3. It shall be the duty of the Governor of Texas to notify the Governor of Colorado and the governor of New Mexico and the President of the United States of the ratification by the State of Texas of the Rio Grande Compact, and, on request of the Governor, the Secretary of State shall furnish to the Governor of each of said States and to the President of the United States a certified copy of this Act. Acts 1939, 46th Leg., Spec.L., p. 531.

Effective March 1, 1939.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

The consent and approval of Congress to the Rio Grande Compact was given by Public No. 96, May 31, 1939, ch. 155, 53 Stat. 785. The Rio Grande Compact was ratified and approved by New Mexico, Laws 1939, ch. 33, p. 59, and by Colorado, Laws 1939, ch. 146.

Title of Act:

An Act ratifying the Rio Grande Compact between the States of Colorado, New Mexico, and Texas, entered into by Commissioners representing the three (3) States and the United States on March 18, 1938; authorizing the Governor of Texas to appoint a Commissioner to administer the provisions of the Compact; providing for the salary and necessary expenses of the Commissioner; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 531.

Art. 7466f—1. Alamogordo Reservoir agreement with New Mexico ratified

The foregoing agreement and Compact between the States of New Mexico and Texas and embraced in the following paragraphs, to wit:

1. The State of Texas withdraws all opposition to the construction and maintenance of the Alamogordo Reservoir upon the Pecos River in the State of New Mexico.

2. That the State of New Mexico will not cause nor suffer Texas to be deprived, in the future, of the same proportion of the floodwaters originating above Avalon Dam which has passed Avalon Dam during the past twenty (20) years.

3. That New Mexico further agrees that she will not, in the future, cause or suffer water to be taken from the Pecos River or its tributaries to irrigate more than seventy-six thousand (76,000) acres within the "Middle Basin," as defined in the Pecos River Compact of February 10, 1925.\*

Be, and the same is in all respects ratified and confirmed, subject only to the consent and approval of the Congress of the United States. Acts 1939, 46th Leg., Spec.L., p. 524, § 1.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

1 Article 7466f.

Effective March 28, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Acts 1939, 46th Leg., Spec.L., p. 524, contained a preamble which read as follows:

"WHEREAS, During the year of 1935, the Department of the Interior of the Government of the United States was considering, at the request of the State of New Mexico, the construction of a storage reservoir upon the Pecos River, generally known as the Alamogordo Reservoir, to store floodwaters of the Pecos River for use in the State of New Mexico; and

"WHEREAS, The State of Texas, through its Governor and its Representatives in Congress, has protested to the President of the United States and to the Department of the Interior against the building of such reservoir, unless and until assurance was given that said reservoir would not become the means of depriving the State of Texas and the citizens thereof of floodwaters of the Pecos River which they were accustomed to receive, and which they were then preparing to store in the Red Bluff Reservoir in Texas, then under construction, and financed in part with funds derived from agencies of the United States; and

"WHEREAS, The Secretary of the Interior fixed a date and invited the Representatives of both States to meet in Washington and to formulate and agree upon a course of action that would permit the construction of the Alamogordo Reservoir, and at the same time protect the rights of Texas and of the citizens thereof in the use of the waters of the Pecos River; and

"WHEREAS, During the month of August, 1935, the Representatives of New Mexico and Texas met in Washington and conferred together and with the Secretary of the Interior and the officials of the Bureau of Reclamation; and

"WHEREAS, It was then and there agreed between the Representatives of the two (2) States, with the approval of the Secretary of the Interior, that Texas should withdraw opposition to the construction of the Alamogordo Reservoir, in consideration of the agreement on the part of New Mexico that she would not cause or suffer Texas to be deprived in the future of the same proportion of the floodwaters originating above Avalon Dam, which has passed Avalon Dam during the past twenty (20) years, and in consideration of the further agreement that New Mexico would not, in future, cause or suffer water to be taken from the Pecos River or its tributaries to irrigate more than seventy-six thousand (76,000) acres of land within the 'Middle Basin,' as defined in the Pecos River Compact of February 10, 1925.

"It was further mutually agreed that the Representatives of the two (2) States participating in said agreement of contract would immediately lay the proposed agree-

ment before the governing boards of the local districts and the Governors of the States, to the end that they might forthwith act thereon, and that such action should be forthwith communicated to the Secretary of the Interior, and in said negotiations and agreement it was set forth that it was contemplated that a compact would be entered into between the two (2) States embracing the foregoing agreement, but that it was not intended that action upon the construction of the Alamogordo Reservoir should be deferred until said Compact was approved, or until the Legislatures of the two (2) States should have acted upon same, as it was not contemplated that such Legislatures would be in session before 1937; and it was there agreed that it should be deemed sufficient when the Governor of New Mexico had indicated to the Governor of Texas that, under the advice of the Attorney General of New Mexico and the Interstate Water Commission of New Mexico, he would recommend the approval of such compact to his Legislature, and the Governor of Texas had thereupon withdrawn opposition on the part of Texas to the construction of such reservoir; and it was further agreed that the Representatives of both States, in Washington assembled, would co-operate to the fullest extent to bring about the necessary exchange between the Governors of the two (2) States, in the expectation that such agreement between the Governors might result in the prompt construction of the Alamogordo Reservoir.

"And it was further mutually agreed that the Representatives of the two (2) States participating in the Conference should request the Secretary of the Interior to regulate and administer the Alamogordo Reservoir, in the spirit of the above quoted agreement, until the Legislatures of New Mexico and Texas should have entered into a compact, as above set forth; duly ratified by their respective Legislatures. And it was recited in such memorandum of agreement that said agreement had been approved by the Commissioner of the Bureau of Reclamation, by the Representatives of the Carlsbad Irrigation District, and by the Attorney General of New Mexico and the Attorney of the New Mexico Interstate Stream Commission; and

"WHEREAS, It is desired by both States to ratify, confirm, and carry out, in good faith, the stipulations and agreements above recited, it is agreed by and between the State of New Mexico and the State of Texas, with the consent and approval of the Congress of the United States, that:

"1. The State of Texas withdraws all opposition to the construction and maintenance of the Alamogordo Reservoir upon the Pecos River in the State of New Mexico.

"2. That the State of New Mexico will not cause nor suffer Texas to be deprived, in the future, of the same proportion of the floodwaters originating above the Ava-

lon Dam which has passed Avalon Dam during the past twenty (20) years.

"3. And New Mexico further agrees that she will not, in the future, cause or suffer water to be taken from the Pecos River or its tributaries to irrigate more than seventy-six thousand (76,000) acres within the 'Middle Basin,' as defined in the Pecos River Compact of February 10, 1925.

"It is further agreed between the State of Texas and the State of New Mexico that when this Compact shall have been ratified by the Legislatures of both States and approved by the Governors thereof, and the consent of the Congress of the United States shall have been given thereto, that the administration of this Compact shall be discharged by the respective officers of the States of New Mexico and Texas, authorized and empowered by the Governors of the respective States to ad-

minister the same, and that thereupon the request and agreement that the Secretary of the Interior should regulate and administer the Alamogordo Reservoir, in the spirit of the foregoing agreement, be withdrawn; wherefore"

**Title of Act:**

An Act ratifying and confirming, subject to the consent and approval of the Congress of the United States, an agreement and compact between the States of New Mexico and Texas, pertaining to the construction and maintenance of the Alamogordo Reservoir upon the Pecos River in the State of New Mexico, and providing for agreement on the part of the State of New Mexico pertaining to the use of the waters of the Pecos River; and declaring an emergency. Acts 1939, 46th Leg., Spec. L., p. 524.

## CHAPTER TWO—WATER IMPROVEMENT DISTRICTS

**Art.**

7641—a. Amendments of act, application [New].

7641—b. Division of districts; election of directors; qualification of directors; change in boundaries [New].

7684—b. Penalties for failure to pay taxes within time prescribed [New].

7775c—1. Excluding from improvement districts land not practicably subject to irrigation [New].

7807i. Districts of not less than 10,000 nor more than 15,000 acres au-

**Art.**

thorized to levy tax for expenses and claims [New].

7807j. Validation of organization and bonds of districts in counties of 48,500 to 48,600 population [New].

7807k. Validating organization on bonds of water improvement districts in water power districts; suit to validate bonds authorized [New].

7807l. Validating bonds and ad valorem taxes of water improvement districts in counties of 250,000 to 320,000 [New].

### Art. 7641—a. Amendments of act, application

These amendments shall apply only to Water Improvement Districts operating under contract with the Department of the Interior of the United States of America, the major portion of the irrigation works for which district shall have been constructed under authority of the United States. Added Acts 1939, 46th Leg., Spec.L., p. 1103, § 1.

Effective April 18, 1939.

Section 4 of Act of 1939 declared an emer-

gency and provided that the Act should take effect from and after its passage.

### Art. 7641—b. Division of districts; election of directors; qualification of directors; change in boundaries

Within ninety (90) days after this Act shall have become effective, the Board of Directors of such District may make an order dividing said District into divisions as nearly equal in size as practicable, being five (5) in number, which shall be numbered consecutively, and thereafter one Director shall be elected for each division by the qualified electors of the whole irrigation district.

In addition to the qualifications prescribed in Article 7641, such Director shall be the owner of land subject to taxation within such division.

The Board may, from time to time, change the boundaries of such division, in accordance with the requirements hereof; provided no such change shall be made within sixty (60) days of any election.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

For the purpose of elections in such district, the Board of Directors shall establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, at the discretion of the Board. Added Acts 1939, 46th Leg., Spec. L., p. 1103, § 2.

Effective April 18, 1939.

Section 4 of Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Limitation on application of this Article, see Article 7641—a.

#### Art. 7684—b. Penalties for failure to pay taxes within time prescribed

If any person fails to pay the taxes imposed by law upon him or his property, under Chapter 2 of Title 128 of the Revised Civil Statutes of Texas of 1925, on or before the 31st day of the succeeding January, the following penalties shall be payable thereon, to wit:

During the month of February, one (1) per cent; during the month of March, two (2) per cent; during the month of April, three (3) per cent; during the month of May, four (4) per cent; during the month of June, five (5) per cent; and on and after the first day of July, ten (10) per cent. Added Acts 1939, 46th Leg., Spec.L., p. 1103, § 3.

Effective April 18, 1939.

Section 4 of the Act of 1939 declared an emergency and provided that the Act

should take effect from and after its passage.

Limitation on application of this Article, see Article 7641—a.

#### Art. 7775c—1. Excluding from improvement districts land not practically subject to irrigation

That after any water improvement district or water control and improvement district has been organized and acquired facilities with which to function as an irrigation district and has voted, issued, and sold bonds for any purpose pertaining to the purposes for which said district was organized, and there are any lands within the boundaries of said district subject to taxation thereby and which are of such a nature as cannot be irrigated in a practicable manner, same may be excluded from the district, only by means and upon conditions as follows:

(a) Upon the application of the owner of such land which is of such a nature as cannot be irrigated in a practicable manner;

(b) On the condition that all taxes levied and assessed by said district upon said lands to be excluded have been fully and completely paid, including all bond tax and flat water rate assessment of whatsoever kind and character;

(c) With the consent of ninety-five (95) per cent of the holders of all outstanding bonds theretofore voted, issued, sold and delivered by said district;

(d) Upon the condition that a like amount of land of at least equal value to that being excluded and which can be irrigated in a practicable manner is added to the district simultaneously with the exclusion of said land not capable of being irrigated in a practicable manner, the new land so added to equal the land excluded, acre for acre, and same to be added upon application of the owner of said new land, such application setting forth that the owner thereof assumes the payment of all taxes to be levied upon such new land by said district from and after the date the same is added to said district, and further setting forth the agreement on the part of such owner that said land shall be subject to future taxes by said district for bond tax and flat rate and all other assessments levied and assessed by said district, as though same had been originally

incorporated into said district, and that same shall be subject to the same liens and provisions as all other lands within the district and covered by the Statutes governing same;

(e) Upon the application of any owner of land within the district which is not capable of being irrigated in a practicable manner to have said land excluded from the district, the Board of Directors of such district may require such owner to procure an application of the owner of lands adjoining the boundaries of said district or adjoining the canals of such district, who owns land capable of being irrigated in a practicable manner from the facilities of said water district, for the including in the district of the lands of such owner in an amount equal to the lands which are to be excluded under the application of the owner thereof, acre for acre. Each of such applications shall set forth the facts concerning the lands to be excluded from and the lands to be added to such district, together with a topographical map of each and some showing of their reasonable market value; the board of directors upon receiving such applications shall communicate the contents thereof to the holders of bonds payable from taxes levied upon property within the district, then outstanding, and when ninety-five (95) per cent or more of said bondholders have consented in writing to such plan of excluding certain land, from the district, which is not capable of being irrigated in a practicable manner and the including of other lands in like amount, acre for acre, which can be irrigated in a practicable manner from facilities of said district, and such consent is filed with the Board of Directors of said District, the Board of Directors may hold a hearing on such applications by giving notice thereof by one publication of the time and place and nature of said hearing, in a newspaper published in the district, and which has been published regularly for more than twelve (12) months next preceding the date of such publication, said publication to be at least ten (10) days before such hearing and not more than twenty (20) days before same.

Upon hearing, the Board of Directors shall hear all evidence in connection with same, and shall hear any and all interested parties, and should the Board of Directors find that all of the conditions herein provided for such exclusion of lands and inclusion of lands in said district have been met, and the same would be for the best interest of said district, the Board of Directors may by resolution adopted and spread upon the minutes exclude said land, which is not capable of being irrigated in a practicable manner, and include the land which may be irrigated from the facilities of the district in a practicable manner, and thereafter the lands excluded shall be free from any lien created on same by reason of its having been included in said district and the lands added by such resolution shall be subject to all laws, liens, and provisions governing such district and the lands within same. Acts 1939, 46th Leg., p. 707, § 1.

Effective April 24, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act providing for the excluding of lands from water improvement districts and from water control and improvement districts where such land is not of such nature as to be subject to irrigation in a practicable manner, upon application of the

owner of such land, by the Board of Directors of such district, with the consent of ninety-five (95) per cent of the bondholders holding bonds payable from taxes levied within such district, and provided a like amount of irrigable land is added to such district, upon the application of the owner thereof at the time of excluding land not subject to irrigation in a practicable manner; and declaring an emergency. Acts 1939, 46th Leg., p. 707.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

**Art. 7807i.** Districts of not less than 10,000 nor more than 15,000 acres authorized to levy tax for expenses and claims

Sec. 1. Any Water Improvement District heretofore created and organized under Chapter 2 of Title 128 of the Revised Civil Statutes of the State of Texas having a present combined acreage within the limits of said District of not less than 10,000 acres, and not more than 15,000 acres, when circumstanced as stated in Section 2 of this Act, is hereby authorized and empowered to levy, assess and collect an annual tax on the taxable properties situated within the boundaries of such District, in order to raise funds reasonably sufficient to pay for necessary repairs to its properties, and to maintain and protect same, and to meet any reasonable and necessary contingent or legal expense incurred in behalf of such District, including valid and legal claims against such District for damages to the property of any other person or corporation, provided such tax shall not exceed Ten (10¢) Cents on the One Hundred (\$100.00) Dollars valuation of such property for any one year.

**Prerequisites to authority to tax; termination of authority**

Sec. 2. The authority to levy, assess and collect such taxes conferred by Section 1 of this Act is to be exercised only when any such District has legally authorized the issuance, and has issued its bonds or other lawful evidence of indebtedness, and has sold a portion of its bonds or other evidences of indebtedness, and with the money thus obtained has constructed a dam across some stream and impounded the waters thereof, and has thereby created a reservoir and secured its water supply, but has not constructed any canal, canals or other means for the diversion of water from such reservoir for irrigation purposes, and is unable to sell sufficient of its other bonds at a price permitted by law, to raise money to construct such necessary canal or canals, and has not sufficient available revenues from any other source which it can lawfully apply to the purposes and uses mentioned in Section 1 of this Act; and the authority conferred by this Act to raise funds by taxation to meet such expenses and demands as are mentioned in Section 1 of this Act shall cease whenever sufficient funds legally applicable to such uses and purposes are otherwise reasonably available.

**Assessments and taxes validated; exception**

Sec. 3. All levies and assessments of taxes made since the year 1931 for any of the purposes mentioned in Section 1 of this Act, by any Water Improvement District as defined in Section 1 of this Act, and circumstanced as set out in Section 2 of this Act, are hereby declared to be, and are hereby made valid and legal for all purposes, the same as if the authority to levy, assess and collect such taxes had been expressly conferred upon such Districts prior to the time when such levies and assessments were made; provided, however, that this Act does not undertake to make valid and lawful, and does not make valid and lawful any such levy or assessment in any instance when such levy and assessment has exceeded the sum of Twenty (20¢) Cents on the One Hundred (\$100.00) Dollars valuation of such property in any one year.

**Existing taxing power not affected**

Sec. 4. Nothing herein contained shall be construed as taking away or limiting any power under any existing law to levy and collect any of the taxes hereinabove referred to, if such power does in fact exist. Acts 1937, 45th Leg., p. 589, ch. 294.

**Art. 7807j. Validation of organization and bonds of districts in counties of 48,500 to 48,600 population**

Sec. 1. All bonds heretofore authorized by the necessary vote of the qualified taxpaying voters of any water control and improvement district or any water improvement district of this State, which bonds have not been sold, and which were authorized for the purpose of financing or aiding in the financing of any work, undertaking, or project, or for refinancing its indebtedness by any such district to which any loan or grant has heretofore been made by the United States of America through the Federal Emergency Administrator of Public Works or through any instrumentality or agency of the United States of America for the purpose of financing or aiding in the financing of such work, undertaking, or project, or for refinancing its indebtedness, including all proceedings for the calling and holding of elections and the authorization and issuance of such bonds, and the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, and such bonds shall be, when sold for not less than par and accrued interest, binding, legal, valid, and enforceable obligations of such district in counties of not less than forty-eight thousand, five hundred (48,500) and not more than forty-eight thousand, six hundred (48,600) population, according to the last preceding Federal Census.

**Water control and improvement districts and water improvement districts validated**

Sec. 1-a. That all water control and improvement districts and water improvement districts, whether created or attempted to be created by the Commissioners Court or the State Board of Water Engineers, and heretofore laid out and established or attempted to be established, are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance.

**Proceedings for financing work or projects validated**

Sec. 2. All proceedings which have been taken prior to the date this Act takes effect, for the purpose of financing or aiding in the financing of any work, undertaking, or project by any such district to which any loan or grant is under contract to be made by the United States of America through the Federal Emergency Administrator of Public Works for the purpose of financing or aiding in the financing of such work, undertaking, or project, including all proceedings for the authorization and issuance of bonds and for the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed.

**Act inapplicable to district whose organization or bonds are in litigation**

Sec. 3. The provisions of this Act shall not apply to the creation of any such district or any obligations issued thereby, where the validity of such district or its obligations are now in litigation. Acts 1937, 45th Leg., p. 876, ch. 432.

**Art. 7807k. Validating organization on bonds of water improvement districts in water power districts; suit to validate bonds authorized**

Section 1. Water improvement districts situated within a water power control district and which have been heretofore declared to have been organized and established by order of a County Commissioners' Court under the terms and provisions of Section 29 of Chapter 76,<sup>1</sup> Acts of the Forty-third Legislature and of Chapter 19,<sup>2</sup> page 54, Acts of 1933, First



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Called Session of the Forty-third Legislature, and the organization of which the County Commissioners' Court found that petitions for the organization thereof had been filed and notice thereof had been given and that the organization of such districts was feasible and practicable and that it was needed, and would be of public benefit and benefit to the lands included in the districts and had caused such findings to be entered of record are hereby found and declared to have been legally created and the same are hereby validated and declared to have been validly created water improvement districts. The fact that by inadvertence or oversight any act of the officers of any county or other person in the creation of any district was not properly done shall in nowise invalidate such district, and all such districts are hereby validated in all respects as though they had been duly and legally established in the first instance.

Sec. 2. All bonds authorized to be issued by such districts, the issuance of which had been authorized by an election held within such districts by an affirmative vote of two-thirds majority of those voting at such election, are hereby found and declared to have been legally authorized to be issued and the same are hereby validated and declared to have been legally authorized to be issued. The fact that by inadvertence or oversight any act of the officers of any districts or other person in the authorization of the issuance of such bonds was not properly done shall in nowise invalidate such bonds, and all such bonds are hereby validated in all respects as though they had been duly and legally authorized to be issued in the first instance.

Sec. 3. Such district may if they so elect validate such bonds by suit as provided by law; provided, however, if such districts herein named so elect it shall not be necessary to validate same by suit but in such event before any bonds are offered for sale, the district shall forward to the Attorney General a certified copy of the records of the organization of such district and the proceedings providing for the issuance of such bonds with such other information relating thereto as the Attorney General may require, and the Attorney General shall examine said records and said bonds, and if he shall find that they have been issued in conformity with the Constitution and laws of the State and that they are valid and binding obligations of said district he shall so officially certify, and such official certificate shall authorize the registration of said bonds by the Comptroller of Public Accounts in the same manner as if same had been validated by suit.

Sec. 4. Provided, however, that nothing contained in this Act shall affect any pending litigation. [Acts 1937, 45th Leg., 1st C.S., p. 1774, ch. 15.]

1 Article 7807d, § 79.

2 Articles 7807d, 7807dd.

Effective July 7, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act providing for the validation of the organization and establishment of water improvement districts situated within a water power control district organized under Section 29 of Chapter 76, Acts of the Forty-third Legislature, and of Chapter 19, page 54, Acts of 1933, First Called Session of the Forty-third Legislature; providing for the validation of bonds authorized to be issued by such districts which have been authorized by two-thirds majority of those voting at such elections;

providing for the validation of such bonds by suit as now provided by law if the districts so elect or by forwarding to the Attorney General a certified copy of the proceedings providing for the issuance of such bonds, the examination thereof by the Attorney General and the issuance of his official certificate that such bonds are valid and binding obligations of said district if he shall so find, and that such official certificate shall authorize the registration of said bonds by the Comptroller of Public Accounts in the same manner as if same had been validated by suit; provided, however, that nothing contained in this Act shall affect any pending litigation; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1774, ch. 15.]

**Art. 7807L. Validating bonds and ad valorem taxes of water improvement districts in counties of 250,000 to 320,000**

Wherever the Board of Directors of any water improvement district in this State, lying wholly or in part in any county having a population as shown by the last preceding Federal Census and all future Federal Census, of not less than two hundred fifty thousand (250,000) nor more than three hundred twenty thousand (320,000) has ordered an election for the issuance of bonds pursuant to Section 52 of Article 3 of the State Constitution, and Title 128, Chapter 2 of the Revised Civil Statutes of Texas of 1925, and all amendments thereto,<sup>1</sup> for the purpose of repairing, improving, or rehabilitating its irrigation system and a two-thirds majority of the qualified property tax-paying voters of such district, whose properties have been rendered for taxation, voting at such election, have authorized the issuance of said bonds and the levy of ad valorem taxes in payment thereof, and the Board of Directors of such water improvement district has canvassed the returns of the election held for such purpose, and by order or resolution duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the voters aforesaid, voting at such election, and thereupon, by proper order or resolution, has authorized the issuance of bonds for the repair, improvement, or rehabilitation of its irrigation system, or any part thereof, and has levied an ad valorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election, and all acts and proceedings had and taken in connection therewith, by such Board of Directors of such water improvement district, the levy of taxes and the provision made for the payment of the interest, reserve, and sinking fund for the payment of the principal of such bonds, are hereby legalized and validated; and all such bonds so authorized, are hereby validated and constituted the legal obligations of such water improvement districts, and all bonds, so authorized, when delivered and paid for at a price of not less than ninety per cent (90%) of their face value, shall constitute the valid and binding legal obligations of such water improvement districts, according to their terms, and no further proceedings for validation, by court proceedings or otherwise, shall be required or necessary in connection with such bonds, or any of them, and all acts of such Boards of Directors, in respect to the issuance of such bonds, are hereby legalized and validated, and such Boards of Directors of such water improvement districts, are hereby expressly authorized and directed to provide for the payment of the interest and the principal of any such bonds by the levy of taxes and appropriations or revenues in the time and manner prescribed by statute; provided, however, this Act shall not affect any bonds, the validity of which is being questioned in any litigation pending at the time this Act becomes effective. Acts 1939, 46th Leg., Spec.L., p. 1043, § 1.

<sup>1</sup> Article 7622 et seq.

Effective March 18, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating and legalizing the authorization of bonds issued by any water improvement districts in this State, lying wholly or in part in any county having a population of not less than two hundred fifty thousand (250,000) nor more than three hundred twenty thousand (320,000)

according to the last preceding Federal Census and all future Federal Census, for the improvement, repair, or rehabilitation of its irrigation system, or parts thereof; validating the levy and assessment of ad valorem taxes in payment thereof; validating the manner of holding the election, canvassing the returns and declaring the results of such election, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1043.

## CHAPTER 3.—WATER CONTROL AND PRESERVATION DISTRICTS

Art.

7880a. Exclusion of lands from Water Control and Preservation District [New].

Art. 7880a. Exclusion of lands from Water Control and Preservation District

Section 1. Whenever there exists within the limits of any Water Control and Preservation District, organized and operating under Title 128, Chapter 3 of the Revised Civil Statutes of Texas of 1925,<sup>1</sup> any lands lying within or adjoining the territorial limits of an incorporated city or town, which was not included in such district at time of the organization of such district, and which lands have been subdivided into town lots and blocks, with streets or other thoroughfares dedicated to the use of the public, and of which a map and such dedication has been duly filed for record with the County Clerk of the County in which said lands are situated, the Board of Directors of such Water Control and Preservation District may by resolution duly passed, discontinue said territory as a part of said District; and when said resolution has been duly passed, it shall be entered by the Secretary of the District in the minutes of the Board of Directors of said District, and from and after said entry, said territory shall cease to be a part of said District, and the said territory so excluded, shall no longer be entitled to be served with water from such irrigation system, or by said District.

Sec. 2. The owner or owners of the fee of any such lands containing not less than ten (10) acres, and constituting a portion of any Water Control and Preservation District, may file with the Board of Directors of said District, a petition praying that such lands owned by them be excluded from said District. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds. When such petition has been filed with the Secretary of said District, the Board of Directors of said District shall order an election to be held at a convenient place or places within said District within thirty (30) days thereafter; and if a majority of the qualified voters living in said District and voting at such election cast their votes in favor of discontinuing said territory as a part of said District, the Board of Directors shall declare such territory no longer a part of said District, and there shall be entered upon the minutes of the Board of Directors, an order to that effect; and from and after such entry, said territory shall cease to be a part of said District, and such excluded lands shall no longer be entitled to be served with water from such irrigation system or by said District.

Sec. 3. Whenever any territory shall be excluded from a Water Control and Preservation District as provided herein, either by Section 1 or Section 2 of this Act, and said Water Control and Preservation District shall, at the time of such withdrawal owe any debts by bond or otherwise, such withdrawn territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said District to continue to levy taxes each year on the property in such territory at the same rate as is levied upon other property of such District, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said District at the time of withdrawal on the territory in the District at the time of withdrawal. The taxes so collected shall be charged only with the cost of levying and collect-

ing same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the owner of any lands in said territory from paying in full, at any time, his pro rata share of the indebtedness, both principal and interest, of said District. Acts 1939, 46th Leg., p. 705.

1 This chapter.

Effective June 30, 1939.

Section 4 of this Act declared an emergen-

cy and provided that the Act should take effect from and after its passage.

### CHAPTER 3A—WATER CONTROL AND IMPROVEMENT DISTRICTS

Art.		Art.
7880—38a.	Election of directors in large districts including two or more counties; precinct method [New].	7880—147v(1). Grant of easement in lands to facilitate operation of Lower Rio Grande Flood Control Project by United States [New].
7880—147a(1).	Validating Act, counties from 250,000 to 310,000 [New].	7880—147w(1). Validating districts in counties of 3,750 to 3,800 population, and bond issues and proceedings [New].
7880—147c7.	Validating proceedings, bonds and tax levies by districts containing not over 3,500 acres [New].	

#### Art. 7880—38a. Election of directors in large districts including two or more counties; precinct method

Section 1. In any Water Control and Improvement District, now or hereafter created, containing within its boundaries more than one hundred thousand (100,000) acres of land and whose boundaries embrace lands within two (2) or more counties, the directors thereof may be selected either (a) by elections held throughout such district as provided in Section 37, Chapter 25 of the Acts of the Thirty-ninth Legislature, Regular Session, 1925, as amended by Section 6, of Chapter 107 of the Acts of the First Called Session of the Fortieth Legislature, 1927;<sup>1</sup> or, (b) by elections held in separate precincts for election of one (1) director in each precinct, which method of selecting directors may hereinafter be referred to as "precinct method." Directors of such districts shall be elected in the manner provided in (a) above unless and until the "precinct method" of selecting same is adopted by any such district in the manner hereinafter provided; but after such precinct method is adopted by any such district such method shall be followed in the election of all directors of such district.

<sup>1</sup> Article 7880—37.

#### Precinct method, how available

Sec. 2. Any such district of the class referred to in Section 1 hereof hereafter created may avail itself of the precinct method of selecting its directors by so providing in the petition for, or order of, its creation; or if such method is not prescribed in the petition for, or order of, its creation, such precinct method may be adopted by order of its directors as hereinafter provided in the case of districts of such classification now existing.

#### Adoption of precinct method; division of district into precincts; boundaries of precincts

Sec. 3. Any Water Control and Improvement District of the class mentioned in Section 1 of this Act, existing at the time this Act takes

effect, may adopt the precinct method of selecting directors in the following manner: the Board of Directors of such district may, by the affirmative votes of not less than four (4) of the members thereof, pass an order providing that thereafter directors of such district shall be selected by the precinct method herein provided, and in the same order said Board of Directors shall divide such district into five (5) director's precincts and define the boundaries of such precincts either by metes and bounds or otherwise in order to clearly identify and delimit the same, and shall number said precincts Nos. 1, 2, 3, 4 and 5, respectively.

**Terms of directors under precinct method; time of elections**

Sec. 4. The terms of office of all directors of any such district so adopting the precinct method of selecting directors, in office at the time such method is adopted, shall end on the second Tuesday in January next following the date of the passage of such order, or when their successors are elected and qualify as hereinafter provided; and on such second Tuesday in January an election shall be held in each of said precincts so defined in said order for the election of a director therein by the qualified voters of such precinct.

**Qualifications of directors**

Sec. 5. Each director elected by the precinct method shall be twenty-one (21) years or more of age, be a citizen of the State of Texas and own land subject to taxation in the precinct in which he is elected.

**Terms of directors; method of determining at first election**

Sec. 6. The respective terms of office of the directors elected at the first elections held in precincts as herein provided shall be determined as follows:

At the first meeting of said Board of Directors so elected five (5) slips of paper of equal size and shape, on three (3) of which shall be written only the words "one year," and on two (2) of which shall be written only the words "two years" shall, out of the presence of all of said directors, be prepared and placed in a receptacle by a disinterested person selected by said directors. Each of said directors shall then, in the numerical order of the precincts in which they were elected, and in the presence of all of the other four (4) directors, and in the presence of at least two (2) witnesses not related to any of said directors, and with said receptacle placed or held above the heads of such directors so that said slips of paper cannot be seen by them or their contents or positions in such receptacle known to them, draw one (1) of such slips of paper therefrom; and the three (3) directors drawing the slips of paper having thereon the words "one year" shall hold their offices one (1) year, or until their respective successors are selected and qualify, and the directors drawing the slips of paper having thereon the words "two years" shall hold their offices two (2) years, or until their respective successors are selected and qualify. After such drawing is held such Board of Directors shall by order or resolution, declare the results thereof and set out the terms of office of the respective directors as determined by such drawings. Thereafter an election shall be held in each precinct for the election of a director on the second Tuesday of January of each year in which the term of office of the previously elected director of such precinct expires; and each precinct director elected at the second and succeeding elections held in said respective precincts shall hold office for two (2) years, or until their respective successors are elected and qualify.

**Laws governing**

Sec. 7. All laws with reference to the election and qualification of directors of Water Control and Improvement Districts shall govern and control the election and qualification of directors selected by the precinct method, except as herein otherwise provided, whether such precinct elections be regular or special.

**Change of boundaries of precincts**

Sec. 8. The boundaries of such precincts may be changed by order of the Board of Directors of any district adopting such precinct method, from time to time, but not more frequently than every four (4) years. Whenever such precincts are so changed the order and notices of the next elections thereafter held shall contain descriptions of such precincts as so changed.

**Vacancies**

Sec. 9. Whenever any vacancy occurs in the office of a director elected by the precinct method, between regular elections, such vacancy shall be filled at a special election in such director's precinct to be called by a majority of the remaining members of the Board of Directors of such district within eight (8) days after such vacancy occurs and held within not more than forty (40) days after such vacancy occurs. Acts 1939, 46th Leg., Spec.L., p. 1105.

Effective April 24, 1939.

**Title of Act:**

An Act providing that in any Water Control and Improvement District, now existing or hereafter created, having within its boundaries more than one hundred thousand (100,000) acres of land, and whose boundaries embrace lands within two (2) or more counties, directors may either be elected at elections held in such district at large as provided by Section 37, Chapter 25 of the Acts of the Thirty-ninth Legislature, Regular Session, 1925, as amended by Section 6, Chapter 107, of the Acts of First Called Session of the Fortieth Legislature, 1927; or by the precinct method; prescribing the procedure for adopting such precinct method of electing directors by districts of such classification hereafter created, and by such districts existing at the time this Act takes effect; limiting the terms of office of directors of any such district adopting such precinct method in of-

fice at the time of such adoption; prescribing the qualifications of directors elected by the precinct method; prescribing the manner of determining the terms of office of the first directors elected by the precinct method, and prescribing the terms of office of directors elected at the second and succeeding precinct elections; providing that the Board of Directors of any such district adopting such precinct method may from time to time change the boundaries of such precincts, but not more frequently than every four (4) years; prescribing the manner of filling vacancies in the offices of directors elected by the precinct method; providing that all laws relating to the election and qualification of directors of Water Control and Improvement Districts shall govern and control the election and qualification of directors elected by the precinct method, except as in this Act otherwise provided; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1105.

**Art. 7880—77a. Adoption of plan of taxation**

(b) All taxes, or charges, or assessments, imposed by a district, as provided for by Sections 106, 107, 108 and 109 of said Chapter 25, for the maintenance and operation of works, facilities and services of such district, shall be and constitute a lien against the lands as to which such taxes, or charges, or assessments, have been established; and, no law applying to a limitation against actions for debt shall apply thereto; same shall not be barred by limitation. Re-enacted Acts 1939, 46th Leg., p. 710, §§ 1, 2.

Effective April 27, 1939.

Section 3 of the amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Section 1 of Acts 1939, 46th Leg., p. 710, read as follows: "That under Acts of 1925, Thirty-ninth Legislature, page 86, Chapter 25, Section 77a, as added to by Acts of 1929, Forty-first Legislature, page

578, Chapter 280, Section 9, Section (b) of said Acts was added; but the United States District Court (D.C. 21 Federal Reporter Supp. —, page 492) had held said Act invalid because the matter of removing the matters and things set forth therein described from the limitation laws of the State and denying the right and withdrawing and denying the right to plead limita-

tion against any taxes levied or assessments made by such district, was not set forth in the Caption of House Bill No. 489, Forty-first Legislature; and since it is the purpose of the Legislature to cure and correct such defect, said section (b) of and under Section 77a of Article 7880, is here now re-enacted, as follows:"

**Art. 7880—147a(1). Validating Act, counties from 250,000 to 310,000**

That the organization of all Water Control and Improvement Districts created by authority of Chapter 25, Acts of the Thirty-ninth Legislature of 1925, and amendments thereto,<sup>1</sup> and heretofore laid out and established or attempted to be established by the proper authorities, in any county in the State of Texas of not less than two hundred and fifty thousand (250,000) and not more than three hundred and ten thousand (310,000) population, according to the last preceding Federal Census, are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Boards of Directors in such Districts in ordering an election or elections, in declaring the results of such elections, and all acts of such Board or Boards of Directors and/or Commissioners Courts and/or County Tax Assessors and Collectors of the Counties of such Districts, in levying and assessing, or attempting or purporting to levy and assess, taxes for and on behalf of such Water Control and Improvement Districts, and all bonds issued and now outstanding and all bonds heretofore voted but not yet issued are hereby in all things ratified, validated, and confirmed. The fact that by inadvertence or oversight any act of the State Board of Water Engineers and/or other officials in the creation of any Water Control and Improvement District in any County coming under the provisions of this Act was omitted or insufficient notice thereof given shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted or insufficient notice thereof given by the County Commissioners Court, County Judges, and/or the Board of Directors of any such District in ordering any hearing, election, or elections, or declaring the result or results thereof, or levying and assessing the taxes of such District, or in issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued or ordered issued or any bonds heretofore voted but not yet issued by such District. It is expressly provided that all acts of the officials in creating or attempting to create the District, in ordering any hearing, election, or elections, in giving notices thereof, declaring the results thereof, or levying and assessing the taxes for such District, or in issuance of the bonds of any such District, are in all respects ratified, validated, and confirmed. Acts 1939, 46th Leg., Spec.L., p. 1038, § 1.

<sup>1</sup> Article 7880—1 et seq.

Effective May 15, 1939.

Section 2 of the Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating the organization of Water Control and Improvement Districts, created by authority of Chapter 25, Acts of the Thirty-ninth Legislature, and amendments thereto in any county in the State of Texas having a population of not less than

two hundred and fifty thousand (250,000) and not more than three hundred and ten thousand (310,000), according to the last preceding Federal Census; and validating all acts of the officials in creating such Districts; and validating all bonds issued and all bonds voted but not yet issued by such Districts; validating all acts of the officials of said District; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1038.

**Art. 7880—147c7. Validating proceedings, bonds and tax levies by districts containing not over 3,500 acres**

Section 1. That all proceedings heretofore had by the Board of Directors of any Water Control and Improvement District situated wholly within one county, and containing not exceeding three thousand five hundred (3,500) acres of land, and created for the purpose of the construction of improvements for a water purification and distribution system, together with a sanitary sewer system for said district, under authority of Section 3, of Chapter 25, Acts of the Thirty-ninth Legislature, Regular Session, as amended by Section 1, of Chapter 107, Acts of the Fortieth Legislature, First Called Session, and as further amended by Section 2, Chapter 280, Acts of the Forty-first Legislature, Regular Session,<sup>1</sup> and Section 3a, of Chapter 25, Acts Thirty-ninth Legislature, Regular Session, as added by Section 17a, of Chapter 280, Acts of the Forty-first Legislature, Regular Session,<sup>2</sup> in the issuance and sale of water and sewer construction bonds issued on the faith and credit of such a district under authority of said Chapter 25, Acts of the Thirty-ninth Legislature, Regular Session, as amended,<sup>3</sup> for which a loan has been made or authorized by the United States, through the Reconstruction Finance Corporation, or any other agency or department of the Government of the United States, are hereby in all things fully validated, confirmed, approved and legalized, and any such bonds heretofore sold, or heretofore authorized but not yet delivered, are in all things fully validated, confirmed, approved and legalized, and such bonds are hereby declared to be the valid and binding obligations of such district. All tax levies made or authorized by such Board of Directors for the purpose of paying the principal of and interest on such bonds are hereby in all things validated, confirmed, approved and legalized. All orders and resolutions authorizing the issuance of any such bonds and levying taxes to pay the principal of and interest on such bonds are hereby in all things validated, confirmed, approved and legalized, and the fact that any such district, in the issuance and sale of any such bonds, failed or neglected or lacked the power to do all things necessary to make said bonds legal, shall in no wise impair such bonds nor the levy of taxes to pay the same, but such bonds and taxes are, in all things validated, confirmed, approved and legalized.

<sup>1</sup> Article 7880—3.

<sup>2</sup> Article 7880—3a.

<sup>3</sup> Article 7880—1 et seq.

Sec. 2. The provisions of this Act shall not apply to any such proceedings, or any bonds issued thereunder, the validity of which has been contested or attacked in any pending suit or litigation. Acts 1939, 46th Leg., Spec.L., p. 1041.

Effective June 7, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating and approving all proceedings had by the Board of Directors of any Water Control and Improvement District situated wholly within one county and containing not exceeding three thousand five hundred (3,500) acres of land, and created for the purpose of the construction of improvements for a water purification and distribution system, together with a sanitary sewer system, under authority of Section 3, of Chapter 25, Acts of the Thirty-ninth Legislature, Regular Session, as

amended by Section 1, of Chapter 107, Acts of the Fortieth Legislature First Called Session, and as further amended by Section 2, Chapter 280, Acts of the Forty-first Legislature, Regular Session, and Section 3a, of Chapter 25, Acts Thirty-ninth Legislature, Regular Session, as added by Section 17a, of Chapter 280, Acts of the Forty-first Legislature, Regular Session, in the issuance and sale of water and sewer construction bonds on the faith and credit of any such districts, for which a loan has been made by the United States, through the Reconstruction Finance Corporation, or other agency or department of the Government of the United States; validating such bonds and the tax levies made for the payment of



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such bonds; providing the provisions hereof shall not apply to any such proceedings or bonds issued thereunder, the validity of which has been contested in any pending suit or litigation; enacting provisions inci-

dent and relating to the subject and purpose of this Act; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1041.

#### Art. 7880—147u. Borrowing from Federal Agencies; bonds and taxes authorized

Sec. 1. Any water control and improvement district in this State is hereby expressly authorized and empowered to borrow money and to receive grants and other aid from the Government of the United States, from the Federal Emergency Administration of Public Works, the Reconstruction Finance Corporation, the Federal Reserve Banks, and any and all other agencies of the Government of the United States, which now are or hereafter may be authorized to make such loans or grants, and which loans or grants may be made on such terms and in such amounts as may be agreed upon between the Board of Directors of such districts and the Government, or any such lending agency. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2092, ch. 501, § 1.]

#### Art. 7880—147v. Counties may co-operate with United States in flood control works

United States authorized to acquire land for flood control, see arts. 5244a, 5244a—1, 5244a—2.

#### Art. 7880—147v(1). Grant of easement in lands to facilitate operation of Lower Rio Grande Flood Control Project by United States

Sec. 1. In order to facilitate the acquisition, operation and maintenance of the Lower Rio Grande Flood Control Project by the United States, pursuant to provisions of the Act of Congress approved August 19, 1935, (49 Stat. 660) and Acts amendatory thereof and supplementary thereto, and Acts 1934, Forty-third Legislature of Texas, Fourth Called Session, Page 71, Chapter 29,<sup>1</sup> there is hereby granted and conveyed to the United States of America: (1) the perpetual right and easement to enter and reenter in and upon the beds and banks of the Rio Grande in Cameron County and Hidalgo County for the purpose of constructing, operating and maintaining suitable revetment and jetty works, retaining walls, levees, dikes, and embankments along and adjacent to the banks of the Rio Grande, and the right to construct, operate and maintain such anchors, cables and any other structures of whatsoever kind, in connection with the construction, operation and maintenance of the Lower Rio Grande Flood Control Project as may from time to time be deemed necessary by the engineers in charge of such Project, and (2) the perpetual right and easement to enter and reenter in and upon the beds and banks of the Arroyo Colorado in Cameron County, Willacy County and Hidalgo County for handling, flowing, carrying, diverting, confining, and controlling flood and drainage water or waters, together with the right to clear and grub said land, and maintain the same free of trees and brush and the right to construct, operate and maintain therein or thereon suitable channels, drainage ditches and structures, flood control and irrigation structures, or any other type or kind of structure, or excavation of any nature whatsoever, as may from time to time be deemed necessary by the engineers in charge of said work for the proper and efficient maintenance and operation of the Lower Rio Grande Flood Control Project.

Provided, however, that this grant and cession is made upon the express condition that the State of Texas shall retain concurrent jurisdiction with the United States of America over every portion of said lands so affected by this grant and cession so far that all process, civil and criminal, issuing under the authority of this State or any of the courts of judicial officers thereof may be executed by the proper officers of the State upon any person amenable to the same within the limits of the lands hereby affected, in like manner and with like effect as if this grant and cession had not taken place. Nothing in this Act shall be construed to be a cession or relinquishment of any rights which the State of Texas or citizens or owners of property therein may hold or possess in the waters of the Rio Grande or the Arroyo Colorado and in the use thereof and in the access thereto.

Sec. 2. If any section, clause or provision of this Act shall be held unconstitutional or otherwise invalid or unenforceable, such holding shall not have the effect of nullifying or in anywise affecting the remainder of this Act, and the parts of this Act not so held to be unconstitutional or invalid shall remain in full force and effect. Acts 1937, 45th Leg., p. 402, ch. 202.

<sup>1</sup> Article 7880—147v.

United States authorized to acquire land for flood control, see arts. 5244a, 5244a—1, 5244a—2.

Art. 7880—147w(1). Validating districts in counties of 3,750 to 3,800 population, and bond issues and proceedings

That the organization of all Water Control and Improvement Districts created by authority of Chapter 25, Acts of the Thirty-ninth Legislature of 1925, and amendments thereto,<sup>1</sup> and heretofore laid out and established or attempted to be established by the proper authorities, in any county in the State of Texas of not less than three thousand, seven hundred and fifty (3,750) and not more than three thousand, eight hundred (3,800) population, according to the last preceding Federal Census, are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Boards of Directors in such Districts ordering an election or elections declaring the results of such elections, levying, attempting, or purporting to levy taxes for and on behalf of such Water Control and Improvement Districts, all bonds issued and now outstanding and all bonds heretofore voted but not yet issued are hereby in all things ratified, validated, and confirmed. The fact that by inadvertence or oversight any act of the State Board of Water Engineers and/or other officials in the creation of any Water Control and Improvement District in any county coming under the provisions of this Act was omitted or insufficient notice thereof given shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted or insufficient notice thereof given by the County Commissioners, County Judges, and/or the Board of Directors of any such District in ordering any hearing, election, or elections, or declaring the result or results thereof, or levying the taxes of such District, or in issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued or ordered issued or any bonds heretofore voted but not yet issued by such District. It is expressly provided that all acts of the officials in creating or attempting to create the District, in ordering any hearing, election, or elections, in giving notices thereof, declaring the results thereof, or levying the taxes for such District, or in issuance of the bonds of any such District, are in all re-

spects ratified, validated, and confirmed. Acts 1939, 46th Leg., Spec.L., p. 1039, § 1.

1 Art. 7880—1 et seq.

Effective Feb. 17, 1939.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act validating the organization of Water Control and Improvement Districts created by authority of Chapter 25, Acts of the Thirty-ninth Legislature, and amendments thereto in any county in the State of Texas having a population of not less

than three thousand, seven hundred and fifty (3,750) and not more than three thousand, eight hundred (3,800), according to the last preceding Federal Census; and validating all acts of the officials in creating such Districts; and validating all bonds issued and all bonds voted but not yet issued by such Districts; validating all acts of the officials of said District; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 1039.

## CHAPTER FOUR—FRESH WATER SUPPLY DISTRICTS

### 3. POWERS OF DISTRICT

Art.

7930—2. Exclusion and annexation of lands in certain districts [New].

### 3. POWERS OF DISTRICT

Art. 7930—2. Exclusion and annexation of lands in certain districts

Sec. 1. Whenever there exists within the boundaries of any Fresh Water Supply District in this State territory to the extent of at least ten (10) acres contiguous and adjoining the lines of such District, the Board of Supervisors of such District may, before the issuance and sale of any bonds on the faith and credit of said District, and, before the levy of any taxes for said District, by Resolution duly passed and adopted, discontinue such territory as a part of said District, in accordance with the provisions of this Act and the method herein and hereby prescribed:

(a) The Board of Supervisors of any such District shall have the power to adopt a Resolution excluding such territory, and which Resolution shall describe the territory proposed to be excluded by metes and bounds; provided, however, that such Resolution shall not become effective until after the issuance and publication of the notice of intention to adopt the same, as hereinafter prescribed; or the confirmation of such Resolution, at an election held in such District, if such election be ordered and held, as herein authorized;

(b) Notice of intention to adopt such Resolution, and which notice shall contain a full copy of the proposed Resolution, shall be published once a week for two consecutive weeks in a newspaper of general circulation within the County in which the District is situated, the date of the first publication to be at least fourteen (14) days prior to the date of the meeting of the Supervisors, and at which meeting it is proposed to adopt the Resolution excluding such territory from the District. At any time before the date fixed for the adoption of the proposed Resolution, excluding such territory, ten (10), or a majority, of the qualified voters of such District, who own land therein, may file a petition with the President or Secretary of the Board of Supervisors of the District, praying the Board of Supervisors to order an election for the purpose of submitting the proposition to exclude such territory from the District to a vote of the qualified voters of such District, who own land therein. Upon the filing

of such petition, it shall be the duty of the Board of Supervisors of such District to order an election to be held in such District, to determine whether or not such territory shall be excluded. In the event no such petition is filed or presented to the President or Secretary of the Board of Supervisors within the time hereinabove prescribed, no election on the proposition shall be required, and such Board of Supervisors shall then have the power to finally pass and adopt the proposed Resolution to exclude such territory from the District; and a copy of such Resolution, signed by a majority of the members of the Board of Supervisors of such District, and duly attested by the Secretary of such Board, shall be filed and recorded in the Deed Records of the County in which the District is situated, and such territory shall be no longer a part of the District from and after the recording of the copy of such Resolution;

(c) Whenever any Fresh Water Supply District has authorized the issuance of any bonds, and the same have not been sold or put into circulation, and no tax levy has been made to pay the principal of and interest on such bonds, the exclusion of any territory from any such District, in conformity with the provisions of this Act, shall result in a cancellation of such authorized bonded indebtedness;

(d) It shall be the duty of the Board of Supervisors of any such District, within a reasonable time after the exclusion of such territory from such District, to adopt a Resolution re-defining the bounds and limits of such District, so that they shall show the exclusion of such territory; and when such Resolution has been duly passed, the Secretary of such District shall enter and record such Resolution in the minutes or records of such Board of Supervisors, and a certified copy of such Resolution shall be promptly filed in the office of the County Clerk of the County in which the District is situated, and such certified copy shall also be recorded in the Deed Records of such County.

#### Annexation of lands

Sec. 2. Defined areas of territory not embraced within a Fresh Water Supply District may be added to the area of any such District in the manner hereinafter provided, to-wit:

Petition for the annexation of such territory shall be signed by a majority of landowners therein, or by fifty (50) landowners, if the number of such landowners is more than fifty (50). Such petition shall be filed with the Secretary of the Board of Supervisors. It shall be the duty of the Board to pass an order fixing a time and place at which such petition shall be heard, which date shall be not less than thirty (30) days from the date of such order. The Secretary shall issue notice of such time and place of hearing, and which notice shall describe the territory proposed to be annexed. The Secretary shall execute said notice by posting copies thereof in three public places in the District, and one copy in a public place within the territory proposed to be annexed; said notices to be posted for fifteen (15) days prior to the date of said hearing. Publication of copy of such notice shall be made in a newspaper of general circulation in the County in which such District is situated, one time, and at least fifteen (15) days prior to such hearing. If, upon the hearing of such petition it is found that the proposed addition of such territory to the District is feasible and practicable, and would be of benefit both to such territory and to the District, then the Board, by Resolution duly entered upon its minutes, may receive such proposed territory as an addition to, and to become a part of, the District. Such Resolution need not include all of the land described in the petition, if upon the hearing a modification or change is found necessary or desirable; and a copy of such

Resolution, signed by a majority of the members of the Board of Supervisors of such District, and duly attested by the Secretary of such Board, shall be filed and recorded in the Deed Records of the County in which the District is situated, and such territory shall be a component part of the District from and after the recording of the copy of such Resolution. The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted or authorized by said District to which it shall have been added; provided, however, that before the added territory shall be subject to any part of such indebtedness or taxes, the Board of Supervisors shall order that an election be held in said District, as enlarged or extended by reason of the annexation of such territory, on the question of the assumption of such indebtedness or taxes by said District, as so enlarged or extended.

#### Elections; notice

Sec. 3. Whenever an election is ordered to be held either for the purpose of confirming or approving the exclusion of any territory, or for the purpose of the assumption of indebtedness or taxes by reason of the annexation of any territory, as herein provided, then in either case such election shall be held and notice thereof given, as is provided in the case of the issuance of bonds by such Fresh Water Supply Districts.

#### Partial invalidity

Sec. 4. If any section, sentence, clause or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act. Acts 1937, 45th Leg., p. 787, ch. 385.

## II. LEVEES

### CHAPTER FIVE—STATE RECLAMATION ENGINEER

Arts. 7960–7971.

Office of state Reclamation Engineer abolished, and functions, officers, employees, records, etc., transferred to the General Land Office, see art. 5421h–1.

### CHAPTER SIX—LEVEE IMPROVEMENT DISTRICTS

#### 1. ESTABLISHMENT

Art. 8017. Same; method to be pursued

(i). [Repealed by Acts 1937, 45th Leg., 1st C.S., p. 1818, ch. 33, § 1.]

Effective 90 days after June 25, 1937,  
date of adjournment.

### III. DRAINAGE

#### CHAPTER SEVEN—DRAINAGE DISTRICTS

##### 1. ESTABLISHMENT

Art.  
8176a. Conversion of drainage district into conservation and reclamation district; orders of commissioners courts validated [New].

##### 1. ESTABLISHMENT

Art. 8176a. Conversion of drainage district into conservation and reclamation district; orders of commissioners courts validated

Section 1. Wherever the Commissioners Court of any county has heretofore entered any order or orders converting or purporting to convert any drainage district wholly situated within such county from a drainage district, organized under the provisions of Section 52 of Article III of the Constitution of this State, into a conservation and reclamation district organized under Section 59 of Article XVI of said Constitution, such action and orders by such Commissioners Court are hereby in all respects validated, ratified, and confirmed. Any and all such drainage districts which have been the subject matter of any such order or orders, are hereby created and declared to be duly and legally created, organized, and functioning conservation and reclamation districts under the provisions of Section 59 of Article XVI of the Constitution of Texas, with all the rights, powers, and duties now or which may be hereafter conferred upon them by law.

##### **Borrowing money from Reconstruction Corporation for specified purposes, authorized—taxation—sinking fund**

Sec. 2. Any drainage district which is operating under the provisions of Section 59 of Article XVI of the Constitution of this State, subject to the provisions of Section 3 hereof, acting by and through the Commissioners Court of the county in which such district is situated, may borrow money from the Reconstruction Finance Corporation for the purpose of taking up and refunding any outstanding bonds and for the purpose of paying or securing funds to pay judgments heretofore or hereafter rendered against such District, and for the purpose of paying or to secure funds to pay warrants issued to pay judgments or to settle or compromise litigation, and for the purpose of paying any and all expenses reasonably necessary or incident to such refunding operations and to evidence its indebtedness to such Reconstruction Finance Corporation, any such drainage district, acting through such Commissioners Court, may issue refunding bonds in such amount and denomination, bearing such rates of interest (not exceeding six (6) per cent per annum, payable annually or semiannually), and having such maturities (not exceeding forty (40) years from their date) as may be fixed in the order authorizing said refunding bonds. The Commissioners Court of such county shall levy a tax upon all property subject to taxation within such district sufficient in amount to pay the interest upon any such refunding bonds so issued, and to create a sinking fund sufficient to retire such bonds at maturity, as well as to pay the costs of collecting such tax.

**Election on issuance of refunding bonds**

Sec. 3. In instances wherein the indebtedness refunded includes obligations other than voted bonds, a majority of the resident property taxpaying voters of such district who vote at an election called for that purpose must vote in favor of the issuance of such refunding bonds and the levy of such tax in payment thereof before any such refunding bonds shall be issued. Such election shall be called by such Commissioners Court, and notice of the time and places of holding such election shall be given by the Clerk of said Court. The notice shall state the purpose of the election, the proposition to be voted upon, define the election precincts and prescribe the polling places (each of which shall be in the district), state the names of the officers of the election and shall be signed by such Clerk. The notice shall be published once each week for three (3) consecutive weeks in a newspaper of general circulation published in the county in which such drainage district is located, or if none is published therein, in the nearest county thereto. The first publication shall be at least twenty (20) days prior to the election. Said election shall be held in accordance with the provisions of the Constitution and General Election Laws, so far as applicable thereto, and only qualified electors who own taxable property in the district and who have duly rendered the same for taxation shall be qualified to vote, and all electors shall vote in the election precinct of their residence, as fixed for the purpose of said election.

**Execution, registration, approval, and delivery of refunding bonds—cancellation of outstanding bonds**

Sec. 4. If such election shall result in favor of the issuance of such refunding bonds and the levy of such tax in payment thereof, the Commissioners Court shall so declare and such bonds may thereafter be executed in the name of the district, signed by the County Judge, and attested by the County Clerk with the seal of the Commissioners Court affixed thereto, and shall be registered by the County Treasurer. Such refunding bonds together with the record pertaining thereto shall be submitted to the Attorney General and when approved by the Attorney General shall be delivered to the Comptroller of Public Accounts, and shall be registered by the Comptroller of Public Accounts and delivered by the Comptroller in exchange for or upon release of the obligations refunded thereby, the evidences of which obligations if evidenced by outstanding securities shall be canceled by the Comptroller of Public Accounts concurrently with the registration and delivery of the refunding bonds. The cancellation or release of outstanding obligations and the delivery of refunding bonds therefor shall be at the times and in the manner and amounts which may be prescribed by the order or orders of the Commissioners Court.

All such refunding bonds when approved by the Attorney General and registered and delivered by the Comptroller of Public Accounts as aforesaid, shall be valid and binding obligations of such district and shall be incontestable for any cause from and after the time of such registration and delivery.

**Adoption of provisions of statute by resolution of commissioners**

Sec. 5. By resolution duly passed at a meeting of the Commissioners Court of any county in which is wholly located any drainage district or districts, and by resolution duly passed at a meeting of the commissioners of any such drainage district or districts, such county and drainage district or districts may adopt the provisions of this Section and from and

after the adoption hereof by said Commissioners Court and by such drainage district or districts, any and all functions, powers, rights, and duties exercised by or pertaining to the commissioners of such drainage district or districts shall be transferred to, vest in, and be thereafter exercised by the Commissioners Court of the county within which said drainage district or districts are wholly situated. The Commissioners Court of said county shall thereafter be the sole governing body of such drainage district or districts with the powers, functions, rights, and duties aforesaid and the members of said Commissioners Court shall not be entitled to any compensation by reason thereof.

#### Partial invalidity

Sec. 6. If any of the provisions of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby. [Acts 1937, 45th Leg., 2nd C.S., p. 1905, ch. 28.]

Effective Oct. 27, 1937.

Section 7 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act relating to drainage districts; validating all orders heretofore entered converting said drainage districts into districts operating under Section 59 of Article XVI of the Constitution and creating and declaring such districts to be legally existing; authorizing districts operating under such provisions of the Constitution to borrow money from the Reconstruction Finance Corporation for re-

funding purposes and to issue refunding bonds and levy a tax in payment thereof; prescribing the method of issuing said refunding bonds; providing a method whereby the functions of drainage commissioners may be exercised by the Commissioners Court of the county wherein such drainage district is wholly situated; providing that if any of the provisions hereof are held to be invalid, such holding shall not affect the remaining provisions; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1905, ch. 28.]

## IV. CONSERVATION AND RECLAMATION

### CHAPTER EIGHT—CREATION OF DISTRICTS

#### Art.

8197f. Condemnation of cemeteries by conservation and reclamation districts and similar districts [New].

#### Art. 8194. Creation

The following laws, though passed as general laws, are in fact special acts relating to conservation districts or authority:

Brazos River Conservation District amended Acts 1931, 42nd Leg., 1st C.S., p. 8, ch. 5, § 1;

Central Colorado River Authority, amended Acts 1937, 45th Leg., p. 680, ch. 341, § 1, Acts 1939, 46th Leg., Spec.L., p. 1045, §§ 1-5;

Comal County Water Recreational District No. 1, Acts 1937, 45th Leg., p. 96, ch. 57;

Harris County Flood Control District, Acts 1937, 45th Leg., p. 714, ch. 360;

Harris County Flood Control District—Donation of Taxes, Acts 1939, 46th Leg., Spec.L., p. 976;

Lower Colorado River Authority, amended Acts 1937, 45th Leg., p. 694, ch. 350, Acts 1939, 46th Leg., Spec.L., p. 1048, §§ 1, 2;

Lower Concho River Water and Soil Conservation Authority, Acts 1939, 46th Leg., Spec.L., p. 1053, §§ 1-18;

Nueces River Conservation and Reclamation District, amended Acts 1937, 45th Leg., 2nd C.S., p. 1891, ch. 20, §§ 1-4, Acts 1939, 46th Leg., Spec.L., p. 1074, § 1;

Panhandle Water Conservation Authority, Acts 1939, 46th Leg., p. 7, § 17, art. 165a-4, provides that Acts 1937, 45th Leg., p. 507, ch. 256, shall not be repealed thereby;



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Sabine-Neches Conservation District, amended Acts 1939, 46th Leg., Spec.L., p. 1080, §§ 1-3;

San Antonio River Canal and Conservancy District, Acts 1937, 45th Leg., p. 556, ch. 276, amended Acts 1939, 46th Leg., Spec.L., p. 1083;

San Jacinto River Conservation and Reclamation District, Acts 1937, 45th Leg., p. 861, ch. 426, amended Acts 1939, 46th Leg., Spec.L., p. 1097, § 1, Acts 1939, 46th Leg., Spec.L., p. 984, §§ 1-4;

Upper Colorado River Authority, amended Acts 1936, 44th Leg., 3rd C. S., p. 2099, ch. 505, Acts 1939, 46th Leg., Spec.L., p. 1060, § 1;

Upper Guadalupe River Authority, Acts 1939, 46th Leg., Spec.L., p. 1062, §§ 1-20;

Upper Red River Flood Control and Irrigation District, Acts 1937, 45th Leg., p. 1128, ch. 454;

Webb County Conservation and Reclamation District, Acts 1939, 46th Leg., Spec.L., p. 1074, §§ 2-9.

### Art. 8197f. Condemnation of cemeteries by conservation and reclamation districts and similar districts

Sec. 1. The use of lands for the construction of dams and the creation of lakes and reservoirs created by such dams constructed on the rivers and streams of the State of Texas by conservation and reclamation districts, and other public districts and bodies politic created for the purpose of the conservation and development of the natural resources of this State, including the controlling, storing, preservation, and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power, and all other useful purposes, under Section 59 of Article XVI of the Constitution of the State of Texas, is hereby declared to be superior to all other uses; and for such other purposes all such districts and bodies politic shall have the power and right of eminent domain for the purpose of acquiring by condemnation any and all land, real estate, improvements, and other property owned and held for cemeteries or burial places, necessary for the construction of any dam or lying within the area to be covered by any lake or reservoir to be created by the construction of any such dam, or within three hundred (300) feet of the high water line of any such lake or reservoir.

#### Procedure

Sec. 2. The procedure in any such condemnation proceeding shall be as provided by Title 52 of the Revised Civil Statutes of Texas, 1925, as amended; provided that the notice stipulated in Article 3264 shall be served on the owner of the title to the land on which such cemetery is situated, and in addition thereto, general notice to all persons having relatives interred in said cemetery shall be given by publication of such notice for two consecutive weeks in some newspaper published in the English language in the county in which such cemetery is situated, and if there be no such newspaper published in such county, then in a newspaper in the nearest county in which such newspaper is published; and provided further that in assessing damages the measure of damages for the land shall be assessed as in other cases, and there shall be assessed an additional amount of damages sufficient to provide for the expense of removal and reinterment of any body or bodies interred in any such cemetery or burial place, and the expense of removing and resetting any monuments or markers erected at such graves, which additional sum shall be deposited in the registry of the court and shall be disbursed only for the purpose of removing and reintering such body or bodies in such other cemetery within the State of Texas as may be agreed upon by the directors of such district and the relatives of the deceased person or persons, or in the event such agreement cannot within thirty days be made or no relatives appear to designate such cemetery, then in such cemetery as may be directed by the county judge of the county in which such proceedings are filed; or, in lieu

of depositing such additional amount for the removal and reinterment of such body or bodies, the applicant for condemnation may give a bond in such amount as may be fixed by said county judge to cover such costs of removal and reinterment, said bond to be payable to and approved by the county judge, and conditioned that such body or bodies will be removed and reinterred as provided in this Article. Acts 1937, 45th Leg., p. 921, ch. 441.

## TITLE 130—WORKMEN'S COMPENSATION LAW

### PART 2

Art.

8307b. Presumptions on appeal from Board; denial by verified pleading [New].

### Art. 8306. Damages and compensation for personal injuries

Sec. 7. During the first four weeks of the injury, dating from the date of its infliction, the association shall furnish reasonable medical aid, hospital services and medicines. During the fourth or any subsequent week, upon application of the attending physician certifying the necessity therefor to the Board and to the Association, the Board may authorize additional medical attention not to exceed one (1) week, unless at the end of such additional week the attending physician shall certify to the necessity for another week of medical attention or so much thereof as may be needed, but in no event shall such medical attention be authorized for a period longer than ninety-one (91) days from date of injury. If the association fails to so furnish same as and when needed during the time specified after notice of the injury to the association or subscriber, the injured employé may provide said medical aid, hospital service and medicines at the cost and expense of the association. The employé shall not be entitled to recover any amount expended or incurred by him for said medical aid, hospital services or medicines nor shall any person who supplied the same be entitled to recover of the association thereof, unless the association or subscriber shall have had notice of the injury and shall have refused, failed or neglected to furnish it or them within a reasonable time. At the time of the injury or immediately thereafter, if necessary, the employé shall have the right to call in any available physician or surgeon to administer first aid treatment as may be reasonably necessary at the expense of the association. During the fourth or any subsequent week of continuous total incapacity requiring the confinement to a hospital, the association shall, upon application of the attending physician or surgeon certifying the necessity therefor to the Industrial Accident Board and to the association, furnish such additional hospital services as may be deemed necessary not to exceed one week, unless at the end of such additional week the attending physician shall certify to the necessity for another week of hospital services or so much thereof as may be needed. Such additional hospital services as are herein provided shall not be held to include any obligation on the part of the association to pay for medical or surgical services not ordinarily provided by hospitals as a part of their services. As amended Acts 1939, 46th Leg., p. 712, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Sec. 7d. For representing the interest of any claimant in any manner carried from the board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorney's fee for such representation, not to exceed one-third (1/3) of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined.

In fixing and allowing such attorney's fees the court must take into consideration the benefit accruing to the beneficiary as a result of such services. No attorney's fees (other than the amount which the board may have approved) shall be allowed for representing a claimant in the trial court unless the court finds that benefits have accrued to the claimant by virtue of such representation, and then such attorney's fees may be allowed only on a basis of services performed and benefits accruing to the beneficiary. [As amended Acts 1937, 45th Leg., p. 535, ch. 261, § 1.]

Amendment of 1937, effective 90 days after May 22, 1937, date of adjournment. Workmen's Compensation Insurance for state employees, see Const. art. 3, § 59.

## PART 2

### Art. 8307. Industrial Accident Board

Sec. 5B. In computing the twenty (20) days for the filing with the Board notices of unwillingness to abide by the final ruling and decision of the Board, and likewise in computing the twenty (20) days to institute a suit to set aside the final ruling of said Board, if the last day is a legal holiday or is Sunday, then, and in such case, such last day shall not be counted, and the time shall be and the same is hereby extended so as to include the next succeeding business day; but this provision shall not extend to or include any cases now filed or now pending in the trial court or on appeal from the trial court; the rights of the parties in such suits now pending or on appeal from the trial courts shall be determined by the law existing prior to the passage of this Act. [As added Acts 1937, 45th Leg., 2nd C.S., p. 1890, ch. 19, § 1.]

Effective Jan. 1, 1938.

Section 2 of this Act declared an emer-

gency and provided that the Act should

take effect from and after Jan. 1, 1938.

### Art. 8307b. Presumptions on appeal from Board; denial by verified pleadings

In the trial of any case appealed to the court from the board the following, if plead, shall be presumed to be true as plead and have been done and filed in legal time and manner, unless denied by verified pleadings:

- (1) Notice of injury;
- (2) Claim for compensation;
- (3) Award of the board;
- (4) Notice of intention not to abide by the award of the board;
- (5) Filing of suit to set aside the award.

Such denial may be made in original or amended pleadings; but if in amended pleadings such must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them must be proved. As added Acts 1937, 45th Leg., p. 535, ch. 261, § 2.

Effective 90 days after May 22, 1937, date of adjournment.

Section 3 repeals all conflicting laws and

parts of laws. Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

## PART 3

## Art. 8308. Employers' Insurance Association

Sec. 17. Repealed. Acts 1939, 46th Leg., p. 713.

Effective April 27, 1939.

## PART 4

## Art. 8309. Definitions and general provisions

## Sec. 1.

"Employee" shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer; provided that an employ e who is employed in the usual course of the trade, business, profession or occupation of an employer and who is temporarily directed or instructed by his employer to perform service outside of the usual course of trade, business, profession or occupation of his employer is also an employee while performing such services pursuant to such instructions or directions; and provided further that such persons, other than independent contractors and their employees, as may be engaged in the work of the employer of enlargement, construction, remodeling or repairing of the premises or buildings used or to be used in the conduct of the business of the employer shall be deemed employees. [As amended Acts 1937, 45th Leg., p. 537, ch. 262, § 1.]

Amendment of 1937, effective May 5, 1937.

Section 2 of Act of 1937 is the emergency section. It reads as follows:

"Sec. 2. The inadequacy of the provisions of the Workmen's Compensation Law to compensate employees for injuries received while in the performance of certain work or acts unusual to their regular employment, but within the general scope and in furtherance, or in the interest, of the business, trade, profession or occupation of the employer (as illustrated by the deci-

sion of the Commission of Appeals, adopted by the Supreme Court, in *Texas Employers' Insurance Association vs. Wright*, 97 S.W.(2d) 171), creates an emergency and an imperative public necessity demanding the suspension of the Constitutional Rule requiring bills to be read on three several days in each House, and said Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

# THE PENAL CODE

## TITLE 1—GENERAL PROVISIONS

### Art. 36. 41 Intoxication and use of narcotics as a defense

Neither intoxication nor temporary insanity of mind produced by the voluntary recent use of ardent spirits, intoxicating liquor, or narcotics, or a combination thereof, shall constitute any excuse for the commission of crime. Evidence of temporary insanity produced, however, by such use of ardent spirits, intoxicating liquor or narcotics, or a combination thereof, may be introduced by the defendant in mitigation of the penalty attached to the offense for which he is being tried.

When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was brought about by the immoderate use of intoxicating liquor or by narcotics or by a combination thereof, the judge shall charge the jury in accordance with the provisions of this Article. As amended Acts 1939, 46th Leg., p. 224, § 1.

Effective May 15, 1939. act should take effect from and after its  
Section 2 of the amendatory act of 1939 passage.  
declared an emergency and provided that the

## TITLE 4—OFFENSES AGAINST THE STATE, ITS TERRITORY, AND REVENUE

### CHAPTER TWO.—MISAPPLICATION OF PUBLIC MONEY

#### Art. 107a. Information by Clerk of Court to State Comptroller as to estate for inheritance taxes

Sec. 9. Within ten (10) days after an inventory and appraisal and list of claims shall have been filed and approved in any estate, it shall be the duty of the County Clerk to furnish the Comptroller of Public Accounts a written report, setting forth in such report the name of the testator, his residence at the date of his death, the names and addresses of the executors, administrators, or trustees, and the location of said estate, the name and address, and relation to the testator of said devisee, legatee, and beneficiary of the estate or of the donor, as the case may be, and the approximate value of the share of each, and said Clerk shall also give to the State Comptroller any other information which that official may call for in reference to any such estate or will or gift, such information to be furnished within ten (10) days after being called for, the cost of same to be taxed against said estate as Court costs and be accounted for as fees of office, such reports and information being for the purpose of enabling the State Comptroller to determine whether an inheritance tax is due, and, if so, the amount thereof. If any county or probate clerk shall fail or refuse to comply with any of the provisions or requirements of this Section, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than Fifty Dollars (\$50) nor more than Two Hundred and Fifty Dollars (\$250). As amended Acts 1939, 46th Leg., p. 646, § 5.

Effective 90 days after June 21, 1939, date provisions are published as arts. 7177, 7125,  
of adjournment. 7130, 7131 and 7135.  
Sections 1-4, 6 cited to the text being civil Emergency section. See note under article 7177.

## CHAPTER FOUR.—COLLECTION OF TAXES AND OTHER PUBLIC MONEY

Art.

141f. Failure to give address of owner on rendering property for taxation [New].

### Art. 141f. Failure to give address of owner on rendering property for taxation

Any person or persons failing to comply with any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Dollar (\$1) nor more than Twenty-five Dollars (\$25). Acts 1937, 45th Leg., p. 792, ch. 387, § 2.

Section 1 of this act is published as Vernon's Rev.Civ.St. art. 7164a.

## CHAPTER SIX.—PERSONAL PROPERTY OF THE STATE

Art.

147b. Forging archaeological objects [New].

### Art. 147b. Forging archaeological objects

Section 1. That the reproduction, retouching, reworking, or forgery of any archaeological or other object which derives value from its antiquity, or the making of such object, whether copied or not, with intent to represent the same to be original or genuine, with the intent to deceive or offer any such object for sale or exchange, or knowingly having possession of any such reproduced or forged objects with intent to offer the same as original or genuine is herewith declared to be a misdemeanor.

Sec. 2. It shall be unlawful to intentionally and knowingly deface Indian paintings, hieroglyphics, or other marks or carvings on rock or elsewhere which pertain to the early Indian habitation of the country.

Sec. 3. If nonresidents of Texas, except agencies of the Federal Government, desire to make any exploration or excavation in or on any prehistoric ruins or archaeological or vertebrate paleontological site in Texas, whether on private or State lands, a permit or annual license shall first be obtained from the Secretary of State. Such permit or license shall be issued by the Secretary of State upon: (1) filing of an application setting out such facts as prescribed from time to time by said Secretary of State; (2) payment of a fee of Fifty Dollars (\$50); and (3) determination by said Secretary of State or by his duly designated representative of the satisfactory scientific fitness of the applicant to make archaeological or paleontological investigations, explorations, or excavations. Provided, however, that exploration to determine the presence of said archaeological and paleontological material exclusive of actual collecting or taking such material may be made previous to taking such permit and provided further that the owner of land, even though he be nonresident in Texas, shall not be required to obtain such permit in order to excavate on his own land. Provided further that the Secretary of State may designate as his representative for this purpose officials of State supported institutions of higher education in the State, the expenses of inspection to be paid in accordance with the provisions of this Act. Provided that out of State agencies cooperating with State supported institutions of higher education shall not be required to obtain said permit.

Sec. 4. All permits or licenses shall terminate upon the following thirty-first day of December, subject to an annual renewal on or before the tenth day of the following January upon payment of an annual license fee of Ten Dollars (\$10), provided, that any permit or license may be revoked by said Secretary of State at any time upon being convinced that explorations or excavations authorized by the permit or license are being conducted unlawfully or improperly.

Sec. 5. The sections of this Act and each part of such sections are hereby declared to be independent sections and parts of sections, and the holding of a section, or part thereof, or the application to any person or circumstances, to be invalid or ineffective or unconstitutional shall not affect any other section, or part thereof or the application of any section, or part thereof, to other persons or circumstances.

Sec. 6. Any person violating any of the provisions of this Act shall be guilty of a misdemeanor and shall forfeit to the State all articles and materials discovered by or misrepresented through his action or efforts, and shall also be fined not exceeding Two Hundred Dollars (\$200), or by imprisonment in jail of not more than thirty (30) days, or by both such fine and imprisonment. Acts 1939, 46th Leg., p. 60.

Effective 90 days after June 21, 1939, date of adjournment.

**Title of Act:**

An Act making it unlawful to reproduce or forge any archaeological or other object, representing same to be original, selling or exchanging the same; requiring non-resi-

dents who collect archaeological or paleontological material to obtain a license; providing for renewal of license; providing a saving clause; providing for a penalty; and declaring an emergency. Acts 1939, 46th Leg., p. 60.

## **TITLE 5—OFFENSES AFFECTING THE EXECUTIVE, LEGISLATIVE AND JUDICIAL DEPARTMENT OF THE GOVERNMENT**

### **CHAPTER ONE.—BRIBERY**

**Art.**

178a. Soliciting bribes by trustee of common or independent school district [New].

#### **Art. 178a. Soliciting bribes by trustee of common or independent school district**

Any school trustee of any common or independent school district within this State who shall solicit, demand, or suggest to another, for himself, or for another, the giving of any money, appointment, employment, testimonial, reward, thing of value, or employment, or of personal advantage or promise thereof, by any company, corporation, or person, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand, or suggest the giving of any such money or other advantage, matter, or thing aforesaid for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter, or thing to another, shall be guilty of a felony, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) and by imprisonment in the county jail for not less than ten (10) days nor more than two (2) years or imprisonment in

the State Penitentiary for not less than two (2) nor more than five (5) years. Acts 1939, 46th Leg., p. 225, § 1.

Effective June 1, 1939.

Section 2 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act to prohibit school trustees from

soliciting, demanding, or suggesting the giving of a bribe for themselves, or for another; prescribing penalties for violation hereof; and declaring an emergency. Acts 1939, 46th Leg., p. 225.

## TITLE 6—OFFENSES AFFECTING THE RIGHT OF SUFFRAGE

### CHAPTER TWO.—POLL TAX

Art.

200a-1. Collector failing or refusing to perform duties as to receipts [New].

Art.

200a-2. False statements to procure receipt [New].

200a-3. Election officer aiding alien poll tax payer to vote guilty of misdemeanor [New].

Art. 200. 249 Delivering receipt or exemption certificate in blank or to fictitious person

From and after the effective date of this Act, it shall be unlawful for any collector of taxes or any person employed by such tax collector, or any other person, to unlawfully issue and deliver any poll tax receipt or certificate of exemption to any person in blank, or to give out to any person a poll tax receipt or certificate of exemption in blank, or who shall issue or deliver any poll tax receipt or certificate of exemption to any fictitious person, or who shall procure the same to be given out, issued, or delivered, shall be deemed guilty of a felony, and upon conviction shall be confined in a penitentiary for not less than three (3) nor more than five (5) years. As amended Acts 1939, 46th Leg., p. 226, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1939

declared an emergency and provided that the Act should take effect from and after its passage.

Art. 200a—1. Collector failing or refusing to perform duties as to receipts

Any Tax Collector charged with the duties as hereinabove provided<sup>1</sup> who shall fail or refuse to perform such duties, or who shall unlawfully deliver a poll tax receipt or certificate of exemption to anyone, shall be punished as now provided in Articles 198, 199, and 200 of the Penal Code of the State of Texas. Acts 1939, 46th Leg., p. 296, § 4.

<sup>1</sup> Rev.Civ.St. arts. 2965, 2970, 2975.

Effective 90 days after June 21, 1939, date of adjournment.

Section 1 is published as Rev.Civ.St. art. 2965, Section 2 as art. 2970, Section 3 as

2975; Section 7 of amendatory Act of 1939 declared an emergency and provided that the Act should take effect from and after its passage.

Art. 200a—2. False statements to procure receipt

Any taxpayer who shall make any false statement to procure a poll tax receipt or falsely answer any of the questions as set out in Section 1, Article 2965, as hereinabove set forth,<sup>1</sup> shall be deemed guilty of false swearing and upon conviction shall be punished by confinement in the State Penitentiary not less than one nor more than three (3) years. Acts 1939, 46th Leg., p. 296, § 5.

<sup>1</sup> Vernon's Rev.Civ.St., arts. 2965, 2970, 2975.

Effective 90 days after June 21, 1939, date of adjournment.



Art. 200a—3. Election officer aiding alien poll tax payer to vote guilty of misdemeanor

If any official of any election in this State shall knowingly permit or procure, or in any manner aid or abet, any alien poll taxpayer to vote at such election, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by confinement in the County Jail not less than thirty (30) nor more than ninety (90) days, or by both fine and imprisonment. Acts 1939, 46th Leg., p. 296, § 6.

Effective 90 days after June 21, 1939, date of adjournment.

CHAPTER THREE.—OFFENSES BEFORE ELECTION

Art.  
212a. Political advertising, regulations concerning [New].

Art. 212a. Political advertising, regulations concerning

Section 1. That no newspaper, magazine, or other publication, published daily, biweekly, weekly, monthly, or at other intervals shall sell, solicit, bargain for, offer, or accept for money, other consideration, or favors, any kind or manner of political advertising from more than one candidate for any or all local, county, State, or Federal offices, unless such publication shall have been published and distributed generally for at least twelve (12) months next preceding the acceptance of the advertising.

Sec. 2. Provided however that this Act shall not apply to publications which have been published and circulated generally for at least twelve (12) months next preceding the acceptance of such advertising, for other than purely political purposes in some locality other than that in which it is located and published at the time of accepting such political advertising from more than one candidate.

Sec. 3. And provided further that Section 1 of this Act shall not apply to publications which have, prior to the acceptance of political advertising from more than one candidate, been published and circulated generally for a period of less than one year immediately preceding the acceptance of such advertising in the event that such publication can show ownership of its physical plant and that its advertising rates are in proportion to the amount and kind of its circulation.

Sec. 4. Whoever violates the provisions of this Act shall be fined not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or be imprisoned in jail not less than three (3) months nor more than six (6) months, or both. Each violation of this Act shall be a separate offense. Acts 1939, 46th Leg., p. 251.

Filed without the Governor's signature, May 22, 1939.

Section 5 of the Act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act providing that no newspaper, magazine, or other publication, published daily, biweekly, weekly, monthly, or otherwise, shall sell, solicit, bargain for, offer, or accept political advertisements for money, other consideration, or favors, from more

than one candidate for any or all political offices, unless such publication shall have been published and circulated generally for at least twelve (12) months next preceding the acceptance of such political advertisement; provided that this Act shall not apply to those newspapers meeting certain qualifications herein set out; providing a penalty for the breach of this Act; and declaring an emergency. Acts 1939, 46th Leg., p. 251.

## TITLE 7—RELIGION AND EDUCATION

## CHAPTER THREE—TEACHERS AND SCHOOLS

Art.

301d. Fraternities, societies, and secret societies prohibited in public schools of certain counties [New].

## Art. 297. School attendance required

Every child in the State who is seven (7) years and not more than sixteen (16) years of age shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred as provided by law, for a period of not less than one hundred and twenty (120) days annually. The period of compulsory school attendance at each school shall begin at the opening of the school term unless otherwise authorized by the district school trustees and notice given by the trustees prior to the beginning of such school term; provided, that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides. As amended Acts 1939, 46th Leg., p. 227, § 1.

Effective 90 days after June 21, 1939, date of adjournment. Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

## Art. 301d. Fraternities, sororities, and secret societies prohibited in public schools of certain counties

Section 1. In all counties of this State having a population of not less than three hundred and twenty thousand (320,000) inhabitants and not more than three hundred and fifty thousand (350,000) inhabitants according to the last Federal Census, a public school fraternity, sorority, or secret society as used in this Act, is hereby defined to be any organization composed wholly or in part of public school pupils, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such school on the basis of the decision of its membership rather than upon the free choice of any pupil in the school who is qualified by the rules of the school to fill the special aims of the organization.

**Organizations declared inimical to public good**

Sec. 2. Any public school fraternity, sorority, or secret society, as defined in Section 1 of this Act, is hereby declared to be an organization inimical to the public good.

**Suspension or expulsion of students; exceptions**

Sec. 3. It shall be the duty of school directors, boards of education, school inspectors, and other corporate authority managing and controlling any of the public schools of this State, in the Counties within the provisions of this Act, to suspend or expel from the school under their control any pupil of such school who shall be or remain a member of or shall join or promise to join, or who shall become pledged to become a member of, or who shall solicit any other person to join, promise to join, or be pledged to become a member of any such public school fraternity, or sorority, or secret society. Provided that the above restriction shall not be construed to apply to agencies for public welfare, viz: Boy Scouts, Hi-Y, Girl Reserves, DeMolay, Rainbow Girls, Pan

American Clubs, and Scholarship societies, and other kindred educational organizations sponsored by the State or National educational authorities.

**Soliciting membership; penalty**

Sec. 4. It shall be unlawful from and after the passage of this Act in the Counties within the provisions of this Act, which counties shall include all counties in this State having a population of not less than three hundred and twenty thousand (320,000) inhabitants and not more than three hundred and fifty thousand (350,000) inhabitants, according to the last Federal Census, for any person not enrolled in any such public school of any such County to solicit any pupil enrolled in any such public school of any such County to join or to pledge himself or herself to become a member of any such public school fraternity or sorority or secret society or to solicit any such pupil to attend a meeting thereof or any meeting where the joining of any such school fraternity, sorority, or secret society shall be encouraged. Any person violating this Section of this Act shall be deemed guilty of a misdemeanor and shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each and every offense.

**Inapplicable to schools above high school level**

Sec. 5. The provisions of this Act shall not apply to schools organized for higher education beyond the high school level.

**Repeal of conflicting laws; partial invalidity**

Sec. 6. All laws and parts of laws in conflict with any of the provisions of this Act in so far as this Act is concerned, are hereby specifically repealed; and should any sections or provisions hereof be by the Courts declared unconstitutional or invalid, such decision shall not impair or invalidate any remaining sections or provisions of this Act. Acts 1937, 45th Leg., p. 1139, ch. 460.

Section 7 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to prohibit fraternities, sororities, and secret societies in the public schools in all counties of this State having a population of not less than three hundred and twenty thousand (320,000) inhabitants

and not more than three hundred and fifty thousand (350,000) inhabitants according to the last Federal Census; making certain exceptions; providing for the enforcement of same; repealing all laws in conflict; providing a saving clause; and declaring an emergency. Acts 1937, 45th Leg., p. 1139, ch. 460.

## TITLE 8—OFFENSES AGAINST PUBLIC JUSTICE

### CHAPTER FOUR.—ARREST AND CUSTODY OF PRISONERS

**Art.**

353a. Escape from jail [New].

**Art. 326.** 329, 225, 210 Aiding one charged with a felony to escape from jail

Whoever shall convey or cause to be conveyed into any jail any disguise, instrument, arms, or any other thing useful to aid any prisoner in escaping, with intent to facilitate the escape of a prisoner lawfully detained in such jail on an accusation of felony, or shall in any other manner calculated to effect the object, aid in the escape of a prisoner legally confined in jail, shall be imprisoned in the penitentiary not less than two (2) nor more than five (5) years. This Article shall also ap-

ply to anyone aiding one who has been convicted, and is being lawfully detained in jail, to escape from jail. As amended Acts 1939, 46th Leg., p. 229, § 1.

Effective April 5, 1939.

Section 2 of the amendatory Act of 1939 declared an emergency and provided that

the Act should take effect from and after its passage.

#### Art. 353a. Escape from jail

Whenever any person legally confined in any jail, upon accusation or conviction of a felony, shall in any manner attempt to escape from such jail, or actually escape therefrom, and while making such attempt shall injure any person, shall be deemed guilty of a felony, and upon conviction, he shall be imprisoned in the State penitentiary not less than two nor more than five years. Acts 1939, 46th Leg., p. 228, § 1.

Effective May 24, 1939.

Section 2 repeals all conflicting laws and parts of laws; section 3 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act prohibiting escapes from any jail and providing a penalty, repealing all laws or parts of laws in conflict herewith, and declaring an emergency. Acts 1939, 46th Leg., p. 228.

### CHAPTER SEVEN—FAILURE OF DUTY

Art.

427c—1. Clerk's failure to notify Industrial Accident Board of Appeals or give notice of judgment [New].

Art.

427e. Old age assistance; offenses; penalty [New].

#### Art. 427c. Superseded

This article, Acts 1931, 42nd Leg., p. 308, ch. 182, was, in effect, re-enacted by Acts 1937, 45th Leg., p. 1352, ch. 502, § 19. The re-enacted provisions are set out as article

427c—1. As enacted in 1931, this article contained provisions identical with the provisions now set out in article 427c—1.

#### Art. 427c—1. Clerk's failure to notify Industrial Accident Board of Appeals or give notice of judgment

That in every case appealed from the Board to any district or county Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon district and county clerks under this law shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a district or county Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a district or county Court who fails to comply with the provisions of this law shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250). Acts 1937, 45th Leg., p. 1352, ch. 502, § 19.

This article, as enacted by Acts 1937, 45th Leg., p. 1352, ch. 502, § 19, contains

Leg., p. 308, ch. 182, set out as article 427c, and at the end thereof carried a citation to the Act of 1931.

**Art. 427e. Old age assistance; offenses; penalty**

It shall be unlawful for any attorney at law or attorney in fact, or any other person, firm or corporation whatsoever, representing any applicant for old age assistance or aid in this State to charge a fee for his services in excess of Ten Dollars (\$10) in aiding or representing any such applicant before the Old Age Assistance Commission or for any other services in aiding such applicant to secure an old age assistance grant. It shall likewise be unlawful for any person, firm or corporation to advertise, hold himself out or solicit the procurement of old age assistance or aid. Any person violating this Section of this Act shall be punished by a fine not to exceed Five Hundred Dollars (\$500), or by confinement in the county jail for a period of not to exceed thirty (30) days, or by both such fine and imprisonment. Where any firm, association, or corporation is found to be guilty of a violation of the provisions of this Section the offending act of such firm, association or corporation shall be deemed to be the act of the president, general manager, or other managing official of such firm, association, or corporation, and such official shall be subject to the same penalties as herein provided for other persons. Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 19.

Effective Oct. 31, 1936.

The other sections of this Act constitute    except sections 14 and 22 which are set  
Vernon's Rev.Civ.St. arts. 6243-2 to 6243-21,    out in notes to arts. 6243-13 and 6243-21.

## TITLE 10—OFFENSES AGAINST MORALS, DECENCY AND CHASTITY

### CHAPTER SEVEN—MISCELLANEOUS OFFENSES

<p>Art. 528a. Enclosing or removing fence enclosing cemetery [New].</p>	<p>Art. 535a. Traffic in children under fifteen years [New].</p>
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**Art. 528a. Enclosing or removing fence enclosing cemetery**

If any person shall enclose, or remove the fence enclosing, any cemetery or burial ground for the intent of using the same for any other purpose or use than as a cemetery or burial ground without the consent of the owners of such cemetery or burial ground he shall be guilty of a misdemeanor and upon conviction therefor shall be fined not more than Two Hundred Dollars (\$200) or by imprisonment in the county jail for not more than thirty (30) days or by both such fine and imprisonment; provided that this Act shall be construed so as not to apply to any cemetery or burial ground condemned for public use in any eminent domain proceedings. Acts 1937, 45th Leg., p. 1170, ch. 464, § 1.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that if any person shall enclose or shall remove the fence from the enclosure or any part thereof of any cemetery or burial ground with the purpose or intent to use such cemetery or burial ground for any other use or purpose he shall be guilty of a misdemeanor

and upon conviction therefor shall be punished by a fine of not to exceed Two Hundred Dollars (\$200), or by imprisonment in the county jail or by both such fine and imprisonment; providing this Act shall be construed so as not to apply to any cemetery or burial ground condemned for public use in any eminent domain proceedings; and declaring an emergency. Acts 1937, 45th Leg., p. 1170, ch. 464.

**Art. 535a. Traffic in children under fifteen years**

Section 1. Any person who shall within this State barter, sell or exchange any child under the age of fifteen (15) years shall be deemed

guilty of a felony and upon conviction thereof shall be confined in the State penitentiary for not less than two years, nor more than five years.

**Offering or advertising for barter, sale, or exchange**

Sec. 2. Any person who shall within this State offer or advertise for barter, sale or exchange any child under the age of fifteen (15) years, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be confined in the county jail for not less than three months, nor more than one year, and such person, association or corporation may be enjoined in a suit brought by the Attorney General of the State of Texas or the District or County Attorney of any county in which said act or acts may have occurred.

**Partial invalidity**

Sec. 3. Should any portion or section of this Act be declared unconstitutional or otherwise invalidated by a court of competent jurisdiction, such decision shall not affect the remaining portion or sections of the Act. Acts 1937, 45th Leg., p. 684, ch. 343.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to make it unlawful to barter, sell or exchange any child under the age

of fifteen (15) years, or to offer or advertise for barter, sale or exchange any child under the age of fifteen (15) years; prescribing penalties for a violation of this Act, and declaring an emergency. Acts 1937, 45th Leg., p. 684, ch. 343.

## TITLE 11—OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

### CHAPTER ONE.—BANKING

Art.

567b. Obtaining money, goods, etc., with intent to defraud, by giving or

drawing check, draft or order without sufficient funds [New].

Art. 554. Exceeding loan limit

No incorporated bank or trust company chartered under the laws of this State shall loan its money, directly or indirectly, or permit any individual, private corporation, company or firm to become at any time indebted or liable to it in a sum exceeding twenty-five per cent of its capital stock actually paid in and surplus, or permit a line of loans or credits to any greater amount to any individual, private corporation, company or firm. Any agent or officer of any incorporated bank or trust company who violates any provision of this Article shall be fined not less than One Hundred nor more than Five Hundred Dollars, or be imprisoned in jail for not less than thirty nor more than ninety days, or both. All loans to members of any unincorporated company or firm shall be considered as if they were loans to such company or firm in determining the limitation here prescribed. The discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as borrowed money; a permanent surplus, the setting apart of which shall have been certified to the Banking Commissioner and which cannot be diverted without due notice to and consent of said officer, may be taken and considered as a part of the capital stock of this article. In no event shall any such loan exceed twenty-five per cent of the authorized capital stock and certified surplus. Provided, however, that the word "corporation" or any other word or term as hereinabove used shall not be taken to include or to refer to a municipal corporation, county or any district created for school or any other State or local public purpose.

As amended Acts 1939, 46th Leg., p. 229, § 1.

Effective March 15, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Art. 567b. Obtaining money, goods, etc., with intent to defraud, by giving or drawing check, draft or order without sufficient funds

Section 1. It shall be unlawful for any person, with intent to defraud, to obtain any money, goods, service, labor, or other thing of value by giving or drawing any check, draft, or order upon any bank, person, firm or corporation, if such person does not, at the time said check, draft, or order is so drawn, have sufficient funds with such bank, person, firm or corporation to pay such check, draft, or order, and all other checks, drafts, or orders upon said funds outstanding at the time such check, draft, or order was so given or drawn; provided that if such check, draft, or order is not paid upon presentation, the nonpayment of same shall be prima facie evidence that such person giving or drawing such check, draft, or order had insufficient funds with the drawee to pay same at the time the said check, draft, or order was given or drawn and that said person gave or drew such check, draft, or order with intent to defraud; and provided further that proof of the deposit of said check, draft, or order with a bank for collection in the ordinary channels of trade and the return of said check, draft, or order unpaid to the

person making such deposit shall be prima facie evidence of presentation to, and nonpayment of said check, draft, or order by, the bank, person, firm or corporation upon whom it was drawn; and provided further that where such check, draft, or order has been protested, the notice of protest thereof shall be admissible as proof of presentation and nonpayment and shall be prima facie evidence that said check, draft, or order was presented to the bank, person, firm or corporation upon which it was drawn and was not paid.

**Giving or drawing check, draft or order without sufficient funds**

Sec. 2. It shall be unlawful for any person, with intent to defraud, to pay for any goods, service, labor, or other thing of value, theretofore received, by giving or drawing any check, draft, or order upon any bank, person, firm, or corporation, if such person does not, at the time said check, draft, or order is so given or drawn, have sufficient funds with such bank, person, firm, or corporation to pay such check, draft, or order, and all other checks, drafts, or orders upon said funds outstanding at the time such check, draft, or order was so given or drawn; provided that such check, draft, or order is not paid upon presentation, the nonpayment of same shall be prima facie evidence that such person giving or drawing such check, draft, or order had insufficient funds with the drawee to pay same at the time the said check, draft, or order was given or drawn and that said person gave such check, draft, or order with intent to defraud; and provided further that proof of the deposit of said check, draft, or order with a bank for collection in the ordinary channels of trade and the return of said check, draft, or order unpaid to the person making such deposit shall be prima facie evidence of presentation to, and nonpayment of said check, draft, or order by, the bank, person, firm, or corporation upon whom it was drawn; and provided further that where such check, draft, or order has been protested, the notice of protest thereof shall be admissible as proof of presentation and nonpayment and shall be prima facie evidence that said check, draft, or order was presented to the bank, person, firm or corporation upon which it was drawn and was not paid.

**Possession of personal property subject to lien, obtained by check, draft or order against insufficient funds**

Sec. 3. It shall be unlawful for any person, with intent to defraud, to secure or retain possession of any personal property, to which a lien has attached, by the drawing or giving of any check, draft, or order upon any bank, person, firm or corporation, if such person does not, at the time said check, draft, or order is so given or drawn, have sufficient funds with such bank, person, firm, or corporation to pay such check, draft, or order, and all other checks, drafts, or orders upon said funds outstanding at the time such check, draft, or order so given or drawn; provided that if such check, draft, or order is not paid upon presentation, the nonpayment of same shall be prima facie evidence that such person giving or drawing such check, draft, or order had insufficient funds with the drawee to pay same at the time the said check, draft, or order was given or drawn and that said person gave such check, draft, or order with intent to defraud; and provided further that proof of the deposit of said check, draft, or order with a bank for collection in the ordinary channels of trade and the return of said check, draft, or order unpaid to the person making such deposit shall be prima facie proof of presentation to, and nonpayment of said check, draft, or order by, the bank, person, firm, or corporation upon which it was drawn; and provided further that where such check, draft, or order has been pro-



tested, the notice of protest thereof shall be admissible as proof of presentation and nonpayment and shall be prima facie evidence that said check, draft, or order was presented to the bank, person, firm, or corporation upon which it was drawn and was not paid; and provided further that the removal of such personal property from the premises upon which it was located at the time such check, draft, or order was drawn or given, shall be prima facie evidence that possession of such property was retained or secured by the giving or drawing of said check, draft, or order.

#### Penalties

Sec. 4. For the first conviction for a violation of sections 1, 2, or 3 of this Act, in the event the check, draft, or order given on any bank, person, firm, or corporation, is Five Dollars (\$5) or less, the punishment shall be by imprisonment in the county jail not exceeding two years, or by a fine not exceeding Two Hundred Dollars (\$200). For the first conviction for a violation of sections 1, 2, or 3 of this Act, in the event the check, draft, or order given on any bank, person, firm or corporation, is in excess of Five Dollars (\$5), but less than Fifty Dollars (\$50), punishment shall be by imprisonment in the county jail not exceeding two years, or by a fine not exceeding Five Hundred Dollars (\$500).

If it be shown on the trial of a case involving a violation of sections 1, 2, or 3 of this Act in which the check, draft, or order given on any bank, person, firm or corporation, is less than Fifty Dollars (\$50), that the defendant has been once before convicted of the same offense, he shall, on his second conviction, be punished by confinement in the county jail for not less than thirty (30) days nor more than two (2) years.

If it be shown upon the trial of a case involving a violation of sections 1, 2, or 3 of this Act that the defendant has two (2) or more times before been convicted of the same offense, regardless of the amount of the check, draft or order involved in the first two (2) convictions, upon the third or any subsequent conviction, the punishment shall be by confinement in the penitentiary for not less than two (2) nor more than ten (10) years.

For the first conviction for a violation of sections 1, 2, or 3 of this Act, in the event the check, draft or order given upon any bank, person, firm or corporation, is in the amount of Fifty Dollars (\$50) or more, punishment shall be by confinement in the penitentiary for not less than two (2) years nor more than ten (10) years.

#### Process and witnesses

Sec. 5. In all prosecutions under sections 1, 2, and 3 of this Act, process shall be issued and served in the county or out of the county where the prosecution is pending and have the same binding force and effect as though the offense being prosecuted were a felony; and all officers issuing and serving such process in or out of the county wherein the prosecution is pending, and all witnesses from within or without the county wherein the prosecution is pending, shall be compensated in like manner as though the offense were a felony in grade.

#### Suggestion for dismissal by complaining witness: penalty

Sec. 6. If any person who has theretofore filed a complaint with any district or county attorney of this State alleging a violation of sections 1, 2, or 3 of this Act, or who has furnished information to any such district or county attorney which has resulted in the acceptance by such district or county attorney of such a complaint, or who has testified concerning such a violation before a grand jury of this State which

has thereafter returned an indictment on such violation, shall suggest to or request the county or district attorney in charge of such prosecution, that such case be dismissed, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100), nor more than Five Hundred Dollars (\$500). Acts 1939, 46th Leg., p. 246.

Effective 90 days after June 21, 1939, date of adjournment.

Section 7 of this Act repeals section 4 of article 1546 of the Penal Code.

Section 8 read as follows: "If any section, subsection, clause, phrase, or sentence of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, clause, phrase, or sentence thereof, irrespective of the fact that one or more of the sections, subsections, clauses, phrases, or sentences be declared unconstitutional."

Section 9 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act making it unlawful to obtain with intent to defraud, money, goods, service, labor, or other thing of value, by giving or drawing any check, draft, or order upon any bank, person, firm, or corporation, if the person drawing or giving such instrument does not at the time it is so given or drawn have sufficient funds with the drawee to pay such instrument and all other checks, drafts, or orders upon such funds outstanding at the time such instrument is given or drawn; providing nonpayment of such instrument upon presentation to be prima facie evidence that the maker or giver thereof had insufficient funds with the drawee to pay same at the time made or given and that the maker or giver thereof gave or drew such instrument with intent to defraud; and providing proof of the deposit of such instrument with a bank for collection and return thereof to depositor unpaid to be prima facie evidence of presentation and nonpayment; and providing notice of protest to be prima facie evidence of presentment to drawee and nonpayment; and further making it unlawful to pay for any goods, service, labor, or other thing of value with intent to defraud, by giving or drawing a check, draft, or order upon any bank, person, firm, or corporation, if the person giving or drawing such instrument does not at the time it is so given or drawn have sufficient funds with the drawee to pay such instrument and all other checks, drafts, or orders upon such funds outstanding at the time such instrument is given or drawn; providing nonpayment of such instrument upon presentation to be prima facie evidence that the maker or giver thereof had insufficient funds with the drawee to pay same at the time made or given and that the maker or giver thereof, gave or

drew such instrument with intent to defraud; and providing proof of the deposit of such instrument with a bank for collection and return thereof to depositor unpaid to be prima facie evidence of presentation and nonpayment; and providing notice of protest to be prima facie evidence of presentment to drawee and nonpayment; and further making it unlawful to secure or retain possession of any personal property to which a lien has attached by the drawing or giving of any check, draft, or order upon any bank, person, firm, or corporation, if the person drawing or giving such instrument does not at the time it is so drawn or given have sufficient funds with the drawee to pay such instrument and all other checks, drafts, or orders upon such funds outstanding at the time such instrument is given or drawn; providing nonpayment of such instrument upon presentation to be prima facie evidence that the maker or giver thereof had insufficient funds with the drawee to pay same at the time made or given and that the maker or giver thereof gave or drew such instrument with intent to defraud; and providing proof of the deposit of such instrument with a bank for collection and return thereof to a depositor unpaid to be prima facie evidence of presentation and nonpayment; providing notice of protest to be prima facie evidence of presentment to drawee and nonpayment; and providing removal of such personal property from the premises where located at the time such instrument is drawn or given to be prima facie evidence that possession of such property was retained or secured by the giving of such instrument; making it unlawful for any person who has theretofore filed a complaint with a district or county attorney concerning a violation of certain sections of this Act, or who has given information to a district or county attorney resulting in the acceptance of a complaint concerning such violations, or who has testified before a grand jury concerning such violations which returns an indictment thereon, to request or suggest to the district or county attorney in charge of the prosecution that prosecution be dismissed; providing for the issuance of process and the summoning and remuneration of witnesses in prosecutions under certain sections of this Act; repealing Section 4 of Article 1546 of the Penal Code of the State of Texas, Revision of 1925; providing punishment for violation; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., p. 246.

## CHAPTER TWO.—INSURANCE

### Art. 571a. Violating law as to automobile insurance

Any insurer or officer or representative thereof which shall violate any provision of this Act<sup>1</sup> shall be subject to a revocation of his or its license by the Board of Insurance Commissioners and in addition shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each such offense. As amended Acts 1937, 45th Leg., p. 671, ch. 335, § 3.

<sup>1</sup> Vernon's Rev.Civ.St. art. 4682b.

## CHAPTER FIVE—PRIZE FIGHTING, ROPING CONTESTS, ETC.

### Art. 614b. Endurance contests limited to twenty four hours; exception of school or college contests

Section 1. It shall hereafter be unlawful for any person to conduct in public competition for prizes, awards or admission fees, any personal, physical or mental endurance contest that continues longer than twenty-four (24) hours.

#### Period of contests

Sec. 2. It shall hereafter be unlawful for any person to conduct, within any period of one hundred sixty-eight (168) hours, in public competition for prizes, awards, or admission fees, more than one (1) such personal, physical or mental endurance contest at the same place or location, and in which any of the same contestants engage.

#### Period of personal contest

Sec. 3. It shall hereafter be unlawful for any contestant to engage in any personal, physical or mental endurance contest for a period of longer than twenty-four (24) hours.

#### Contests in same locality

Sec. 4. It shall hereafter be unlawful for any person to engage, within any period of one hundred sixty-eight (168) hours, in more than one (1) personal, physical or mental endurance contest which is conducted in the same place or location.

#### Penalty

Sec. 5. Each promoter of or person conducting any personal, physical or mental endurance contest in public competition for prizes, awards or admission fees, who shall violate any provision of this Act, or any person who shall enter any contest that violates any provision of this Act, or any person who shall violate any provision of this Act, shall be fined not less than \$100.00 nor more than \$1000.00 for each offense, or confined in the county jail not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment.

#### Exception of school or college contests

Sec. 6. The provisions of this Act shall not apply to any athletic contest of schools, colleges or universities of the State, nor to any trial contest for the purpose of testing the strength and capacity of materials and machinery of any kind.

## Place of contest as nuisance

Sec. 7. Any house, structure, building, place, or open air space that is being used for the purposes in violation of the provisions of this Act is hereby declared to be a common nuisance. Any person who knowingly maintains or assists in the maintaining of such a place or who permits the maintenance of such a place on premises owned by him, or under his control, is guilty of maintaining a nuisance; and any State Ranger or any peace officer, any sheriff, deputy sheriff, constable, mayor, city councilman, policeman, or other peace officer or any city, civic, or other organization which shall promote or assist in promoting or knowingly permit or accept any receipts from any persons who shall promote or assist in promoting or take part in any contest enumerated or referred to in said Chapter 62 shall be punished as provided in Section 5 of said Chapter 62. As amended Acts 1937, 45th Leg., p. 706, ch. 355, § 1.

Section 2 of the amendatory Act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

## CHAPTER SIX.—GAMING

## BETTING ON ELECTIONS, SPORTS AND RACING

Art.  
646a. Dog races, betting on; keeping place for betting on races; corporations for promotion of dog racing prohibited [New].

Art.  
648—1. Horse racing, betting on [New].  
648—2. Penalty for betting on horse races [New].  
652a. Bookmaking; definition; penalty [New].

## BETTING ON ELECTIONS, SPORTS AND RACING

Art. 645. 588, 397 What "bet or wager" includes

The bet or wager may be of money, or of any article of value, and any device in the form of purchases or sale or in any other form made for the purpose of concealing the true intention of the parties is equally within the meaning of a bet or wager. As amended Acts 1937, 45th Leg., 1st C.S., p. 1737, ch. 1, § 3.

Art. 646a. Dog races, betting on; keeping place for betting on races; corporations for promotion of dog racing prohibited

Section 1. Hereafter it shall be unlawful for any person to bet or wager money or thing of value upon any dog race, or upon the result of any race, speed, skill, or endurance contest, of, by or between dogs, run or to be run or held in this State or elsewhere.

Sec. 2. Whoever violates any provision of this Act shall upon conviction, be fined not less than Two Hundred (\$200.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, and be imprisoned in jail not less than thirty (30) days, nor more than ninety (90) days.

Sec. 3. If any person shall keep or be in any manner interested in keeping any premises, building, room or place for the purpose of being used as a place to bet or wager upon dog races or contests of speed, skill or endurance of, by or between dogs, or to keep or to exhibit for the purpose of gaming any such premises, building, room or place whatsoever, or as a place where people resort to gamble, bet or wager upon any such dog race or contest, he shall upon conviction be confined in

the penitentiary not less than two (2) nor more than four (4) years. Any premises, building, room or place shall be considered as used for gaming or to gamble with or for betting or wagering if any money or anything of value is bet on such dog race or contest or if the same is resorted to for the purpose of gaming or betting upon any such dog race or contest.

Sec. 4. No corporation, private or otherwise, may be organized, formed, chartered or authorized to do business in this State which has for its purpose directly or remotely, the operation or running of dog races, or contests of speed, skill or endurance of, by or between dogs, or the maintenance, furnishing, leasing or renting of a track, place, enclosure, unenclosure, room, building or combination of either where dog races or contests of speed, skill or endurance of, by or between dogs are, or may be held, run, raced or exhibited.

The charter or permit of any corporation now doing business in this State, may be forfeited, under the provisions of law governing the forfeiture of corporate charters in this State, for any or all of the grounds herein specified and set forth in this section.

Sec. 5. It shall be the duty of all peace officers to arrest with or without a warrant any and all persons violating any provision of this Act, whenever such violation shall be within the view or knowledge of such peace officer.

Sec. 6. It is hereby provided that if any section, subsection, paragraph, clause or part thereof of this Act is declared unconstitutional or inoperative by any Court of competent jurisdiction, the same shall not affect or invalidate the remaining section, subsection, paragraph, clause or part of this Act. Acts 1937, 45th Leg., 1st C.S., p. 1742, ch. 3.

Section 7 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act making it unlawful to bet or wager money or anything of value upon any dog race, or upon the result of any race, speed, skill or endurance contest between dogs, to be run or held in this State or elsewhere and providing a penalty therefor; prohibiting keeping any premises, building, room or place for the purpose of being used as a place to bet or

wager upon dog races and providing a penalty therefor; prohibiting the incorporation of concerns for the purpose of operating dog tracks and providing penalties and forfeiture of charters and permits of corporations violating the provisions of this Act; providing for the arrest of violators of this Act in certain instances without warrants; providing a severance or savings clause, and declaring an emergency. Acts 1937, 45th Leg., 1st C.S., p. 1742, ch. 3.

**Art. 648—1. Horse racing, betting on**

Sec. 2. That from and after the passage of this Act<sup>1</sup> it shall be unlawful for any person, firm, corporation, or association of persons at or within any enclosure in this State at which any horse race is to be run, trotted, or paced, to take or accept any bet or aid any other person in betting, taking, or accepting any bet upon any horse race by means of the certificate system of betting.

The purpose of this section is to prohibit that method of betting under which contributions of money are received toward the entry of any horse in a race selected to finish in a certain position in such race, the person so contributing acquiring an interest in the total money so contributed on all horses in such race selected to finish in that position in proportion to the amount of money contributed by such person, the person so contributing receiving a certificate on which is shown the number of the race, the amount contributed, and the number or name of the horse respectively selected by such person, and the position in which the horse has been selected to run. Under such certificate system the sums con-

tributed on all horses selected to run in the same position are paid out to the holders of certificates on the winning horse equally in proportion as the amount contributed by the holder of the certificate bears to the total amount contributed toward the entry of all horses in said race selected to run in that position.

Sec. 2-a. That from and after the passage of this Act, it shall be unlawful for any person, association of persons, or any corporation, at any race track in this State, to bet or wager any money, or any article of value, on any horse race to be run, trotted, or paced at any such track in this State. Acts 1937, 45th Leg., 1st C.S., p. 1737, ch. 1.

<sup>1</sup> This article and arts. 645, 648—2, 655a.

Section 1 repealed L.1933, 43rd Leg. 1st C.S., ch. 10. Sec. 3 amended P.C. art. 645, section 4 is published as P.C. art. 648-2 and section 5 declared an emergency and provided that the act should take effect from and after its passage.

#### Art. 648—2. Penalty for betting on horse races

Whoever violates any provision of this Act<sup>1</sup> shall be fined not less than Two Hundred (\$200.00) Dollars nor more than Five Hundred (\$500.00) Dollars and be imprisoned in jail not less than thirty (30) days nor more than ninety (90) days. Acts 1937, 45th Leg., 1st C.S., p. 1737, ch. 1, § 4.

<sup>1</sup> This article and arts 645, 648—1, 655a.

#### Art. 652a. Bookmaking; definition; penalty

Section 1. Any person who takes or accepts or places for another a bet or wager of money or anything of value on a horse race, dog race, automobile race, motorcycle race or any other race of any kind whatsoever, football game, baseball game, athletic contest or sports event of whatsoever kind or character; or any person who offers to take or accept or place for another any such bet or wager; or any person who as an agent, servant or employee or otherwise, aids or encourages another to take or accept or place any such bet or wager; or any person who directly or indirectly authorizes, aids or encourages any agent, servant or employee or other person to take or accept or place or transmit any such bet or wager shall be guilty of book making and upon conviction be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than (5) or by confinement in the county jail for not less than ten (10) days nor more than one (1) year and by a fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars.

##### Number of acts to constitute offense

Sec. 2. Any person who shall within a period of one (1) year next preceding the filing of the indictment commit as many as three (3) acts which are prohibited under Section 1 of this Act shall be guilty of engaging in the business of book making and upon conviction shall be punished as provided in Section 1 of this Act.

##### Definition

Sec. 3. The term "pursuing the business of book making" within the meaning of Section 2 shall not be restricted to mean the primary or principal vocation or business of the defendant.

##### Using place for book making

Sec. 4. Any owner, agent, lessor or lessee of any real or personal property who shall knowingly use or knowingly permit such property to

be used in connection with book making, as such term is herein defined, shall be guilty of a felony and upon conviction shall be punished as set forth under Section 1 of this Act.

**Use of Communication methods in aid of book making; penalty**

Sec. 5. It shall be unlawful for any person or the agent, servant or employee of any person, corporation or association of persons, knowingly to furnish telephone, telegraph, teletype, teleprint or radio service or equipment; or to place the same on any property in this State used for the purpose prohibited by this Act or to assist in the violation of any of the provisions of this Act by the furnishing of any telephone, telegraph, teletype, teleprint or radio service or equipment. It shall also be unlawful for any person or association of persons or corporations knowingly to permit any telephone, telegraph, teletype, teleprint, radio or other means of communication whatever to remain on any property used for the purpose prohibited by this Act. Any person or association of persons or any corporation violating any provision of this section shall be fined not less than One Hundred (\$100.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars. No person or corporation engaged in the business of furnishing telephone, telegraph, teletype, teleprint, radio service or equipment to the public shall be liable in damages when it or they, in good faith, refuse to furnish telephone, telegraph, teletype, teleprint, radio service or equipment, or refuse to continue to do so, believing it to be used or it is used in violation of this Act, or where it or they refuse to furnish or to continue to furnish telephone, telegraph, teletype, teleprint, radio service or equipment after written notice from a grand jury, district attorney, county attorney, sheriff, chief of police, constable, any member of the State Highway Patrol or State Ranger served by registered mail upon such person, corporation or association of persons, that the equipment or service furnished to a particular person, corporation or place is being furnished in violation of the provisions of this Act. After such notice has been given to any person or corporation engaged in the business of furnishing telephone, telegraph, teletype, teleprint, radio service or equipment to the public that such service or equipment is being used or is to be used in violation of this Act, the continued furnishing of such service or equipment shall be prima facie evidence of the knowledge of such person, corporation or association of persons that said property or premises are being used in violation of this Act.

**Public nuisance; abatement and injunction; bond**

Sec. 6. Any room, place, building, structure or property or the furniture, fixtures or paraphernalia of whatsoever kind or character used in connection with the offense of book making or pursuing the business of book making, as defined in this Act, are hereby declared to be public nuisances. Whenever the district attorney, criminal district attorney, county attorney or Attorney General has reliable information that such a nuisance exists he shall file a suit in the name of the State in the county where the nuisance is alleged to exist to abate such nuisance. If judgment be in favor of the State, then judgment shall be rendered abating said nuisance and enjoining the defendant or defendants from maintaining the same and ordering the said premises to be closed for one year from date of said judgment, unless the defendants in said suit or the owner, tenant or lessee of said property, make bond payable to the State at the county seat of the county where such nuisance is alleged to exist in the penal sum of not less than One Thousand (\$1,000.00) Dollars nor

more than Five Thousand (\$5,000.00) Dollars with good and sufficient sureties to be approved by the judge trying the case conditioned that the acts prohibited in this law shall not be done or permitted to be done in or upon said premises or the terms of the injunction violated. On the violation of any condition of such bond or injunction the whole sum may be recovered as a penalty in the name and for the State in the county where such conditions are violated, all such suits to be brought by the district attorney, criminal district attorney, county attorney of such county, or the Attorney General of Texas.

**Accomplice testimony; corroboration; immunity of witness**

Sec. 7. A conviction may be had for the violation of any of the provisions of this Act upon the uncorroborated testimony of any accomplice; provided, further, that any party to a transaction prohibited by this Act may be required to furnish evidence and testify, but after so testifying such person shall be exempt from prosecution with reference to any transaction about which he is required to furnish evidence.

**Allegations and proof**

Sec. 8. Upon the trial for any offense under this Act it shall not be necessary that the State allege or prove that any race, game, contest or event was in fact run or did in fact happen or occur.

**Joint indictments; joint trials**

Sec. 9. For the violation of any of the provisions of this Act, two or more persons may be jointly indicted in single or multiple counts of the same indictment and at the election of the State be jointly tried; provided that upon any such joint trial the defendants may testify as witnesses for one another.

**Arrest without warrant**

Sec. 10. It shall be the duty of all peace officers and all other officers named in this Act to arrest without warrant any and all persons violating any provision of this Act, whenever such violation shall be committed within the view of such officer or officers.

**Provisions cumulative**

Sec. 11. The provisions of this Act shall be cumulative of all other existing articles of the Penal Code upon the same subject and in the event of a conflict between existing articles and the provisions of this Act then and in that event the provisions, offenses and punishments set forth herein shall prevail over such existing articles.

**Partial invalidity**

Sec. 12. If any clause, provisions, requirement, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not invalidate the remainder of this Act; but shall be confined in its operation to the clause, provisions, requirement or part thereof declared invalid. Acts 1937, 45th Leg., 1st C.S., p. 1739, ch. 2.

Section 13. declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act defining and prohibiting the offenses of "book making" and of "pursuing the business of book making"; making it

unlawful to permit the use of certain property in connection with book making; prohibiting and regulating the use of certain methods of communication in connection with or in aid of book making; declaring certain property used in connection with book making to be a public nuisance and



providing procedure for the abatement of that nuisance; authorizing conviction for any offense under this Act upon the uncorroborated testimony of an accomplice; and exempting from prosecution accomplices who testify; providing the quantum of proof and allegation upon trial of cases arising under this Act; prescribing penalties for a violation of the several provisions hereof; making the provisions of this Act cumulative of existing laws; pro-

viding that peace officers and other officers named herein may make arrests without warrants in certain instances; providing for the joinder of persons in indictment for the offenses herein and for joint indictment and joint trial for offenses under this Act and prescribing procedure relative thereto; providing a saving or severance clause; and declaring an emergency. Acts 1937, 45th Leg., 1st C.S., p. 1739, ch. 2.

**Art. 655a. Texas Racing Commission; horse racing and exhibitions authorized; licenses [Repealed in part]**

Subsec. 5. Any person or persons, association or incorporation desiring to conduct racing of horses in Texas and to use in connection therewith the said certificate system, as in this Act authorized, shall make application in writing to the Racing Commission for license so to do. On the filing of such application, the Commission shall promptly cause to be published in a newspaper of general circulation in the county where the license to conduct racing is sought, and if there be no such newspaper in such county, then in a newspaper of general circulation in the nearest county, a brief notice of the contents of the application. If the newspaper used shall be a daily paper, then there shall be three (3) insertions of such notice four (4) days apart. If the newspaper used be a weekly paper, then in two (2) successive issues thereof. The expense of such publication shall be paid by the applicant, and the Commission shall have the right to require from the applicant a deposit with it of the estimated amount prior to the making of such publications.

On the completion of such publication, and if there shall be opposition to the granting of such application, the Commission shall set a hearing on the application and give written notice to all interested parties of the time and place of the hearing, allowing reasonable time and opportunity for interested parties to be so heard.

The application shall be acted on by the Commission within not exceeding twenty (20) days from the completion of the giving of such notice unless for good cause the Commission shall postpone action thereon. The application shall be finally acted on by the Commission within not exceeding sixty (60) days from the date of the filing of the application.

The application shall state the days on which such racing is desired to be conducted; it shall describe the place and race track or course at which the races are to be conducted; it shall be in such form and supply such facts as the Commission shall prescribe, and such application shall be verified. If the applicant is eligible to receive a license under the provisions of this law, it shall be the duty of the Racing Commission to fix the racing days as it determines shall be allotted to such applicant, and the Commission shall issue a license for the holding of the meeting or meetings so sought to be held. The license issued shall describe the place and track or race course at which the licensee is authorized to hold such meeting or meetings, and the authority conferred in any one license shall be limited to a twelve (12) months period from the date of the license; provided, however, the Commission may in its discretion for good cause, to be shown in writing by the applicant, issue such license for a three (3) year period from the date thereof. The rights granted by the license shall not be assignable, except on application to the Commission for authority so to do, and the permission of the Commission obtained.

The licensee shall pay to the Commission in advance, as a condition of granting of the license, a license fee for each race meeting authorized to be held, the amounts respectively thus stated, to wit:

If a race meet is to be conducted in a city or town of a population not exceeding three thousand (3,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be One Hundred Dollars (\$100); if in a city of more than three thousand (3,000) and not exceeding ten thousand (10,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be the sum of Two Hundred Dollars (\$200); if in a city of more than ten thousand (10,000) and not exceeding twenty thousand (20,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be the sum of Five Hundred Dollars (\$500); if in a city of more than twenty thousand (20,000) and not exceeding fifty thousand (50,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be the sum of One Thousand Dollars (\$1,000); if in a city of more than fifty thousand (50,000) and not exceeding one hundred thousand (100,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be the sum of Fifteen Hundred Dollars (\$1,500); and if in a city of more than one hundred thousand (100,000) inhabitants, or within twenty-five (25) miles thereof, such license fee shall be the sum of Two Thousand Dollars (\$2,000); such population to be determined by the last preceding census of the United States.

The license fees so received by the Racing Commission shall be promptly remitted to the Treasurer of the State of Texas through the State Comptroller of Public Accounts, and shall become and be a part of the Special Racing Fund hereinafter mentioned.

Cancellation, for any cause authorized under this Act, shall not entitle the licensee to a refund of the fee or any part thereof paid for such license.

The Commission may within its discretion limit the issuance of licenses to one per county in any one calendar year.

The license issued shall expressly provide that the licensee shall, in addition to the license fees paid, remit to the Treasurer of the State of Texas, through the State Comptroller, at the end of each racing meet, or sooner if directed by the Racing Commission, such amounts as are hereinafter provided, received as commission or compensation by the licensee, as authorized by this Act. This fund, when received by the Treasurer, shall be held by him and credited as a Special Racing Fund.

The expenses incurred and authorized by virtue of this Act shall be payable out of the Special Racing Fund, not otherwise, and so much thereof as may be necessary is hereby appropriated and all amounts shall be paid upon accounts approved by the Chairman of the Racing Commission and warrants drawn against said fund by the Comptroller on the State Treasury.

The Treasurer of the State of Texas, in December of each year, shall make a complete statement of the amount he has received within the calendar year under the provisions of this Act. After there shall have been charged against this fund the theretofore paid out operating expenses of the Racing Commission in that year as herein authorized, and the additional amount which the Racing Commission shall estimate as being required to be paid out in that year, and, in addition thereto, such amount as the said Racing Commission shall estimate as the expenses for the operating of the Commission for the next succeeding calendar year, the amount then remaining in this fund shall be held for and disbursed thus, viz:

After providing for the operating expenses of the Racing Commission as aforesaid, an amount equal to twenty-five per cent (25%) of the funds remaining in the Special Racing Fund shall by the Treasurer of the State of Texas be paid into and credited to the State Available School Fund of Texas as provided by the Constitution of the State of Texas. An amount equal to twenty per cent (20%) of the funds then remaining in the Special Racing Fund shall be used by the Board of Control of the State of Texas to purchase, transport, and deliver for distribution well-bred and approved stallions and jacks throughout the State of Texas, and in connection therewith, defray the actual reasonable expense incident to the purchase, transportation and maintenance of such animals, in order thereby to promote the breeding of better live stock in the State of Texas. After deducting from said Special Racing Fund the operating expenses of the Racing Commission as aforesaid, and after deducting from said Special Racing Fund the said twenty-five per cent (25%) going to the State Available School Fund and after deducting the said twenty per cent (20%) to be used by the Board of Control of the State of Texas as aforesaid, the balance remaining in said Special Racing Fund, so far as it may be required, shall be used for the payment of the appropriations by the Legislature for the support and maintenance of the State Department of Agriculture as said appropriations for the Department shall be fixed and allowed by the Legislature of the State of Texas from time to time. It is further provided that any excess left in the Special Racing Fund shall be by the State Treasurer transferred to and become a part of the "Texas Old Age Assistance Fund." As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 5.

Subsec. 5a. The licensee shall keep an accurate record of all receipts and disbursements during any racing meet authorized by the Texas Racing Commission to be conducted by said licensee, which books and records shall at all reasonable times be open to inspection of the Comptroller of Public Accounts of the State of Texas, and to the Texas Racing Commission or its duly qualified agents; and at the close of each racing meet held by such licensee, or sooner if directed by the Racing Commission, he shall remit to the Treasurer of the State of Texas through the Texas Racing Commission as follows: Where the pari-mutuel turnover is not more than One Hundred Thousand Dollars (\$100,000), one-fourth ( $\frac{1}{4}$ ) of the ten per cent (10%) deducted by such licensee from the contributions of purchasers of certificates on horses to run first, second, and/or third in any given race; and where the pari-mutuel turnover is more than One Hundred Thousand Dollars (\$100,000) for any such meet, thirty per cent (30%) of the ten per cent (10%) deducted by such licensee from the contributions of purchasers of certificates on horses to run first, second, and/or third in any given race. In addition to the above tax, there is also levied a tax of one per cent (1%) upon the gross amount received from the sale of pari-mutuel tickets, which sum shall be deducted by the licensee and remitted to the State Treasurer in the same manner as are remitted the other taxes herein provided for. One-fourth ( $\frac{1}{4}$ ) of the revenue from said gross receipts tax shall be credited to the Available School Fund, and three-fourths ( $\frac{3}{4}$ ) shall be credited to the Old Age Assistance Fund. Said one per cent (1%) gross receipts tax shall be in addition to the ten per cent (10%) "take" deducted by the licensee. The licensee is hereby constituted Trustee for the State of Texas to collect and remit the sums provided herein, and such sums shall constitute and be a trust fund belonging to the State of Texas. Failure of any person to collect and remit any sums prescribed herein in accordance herewith shall constitute the offense of embezzle-

ment, and upon conviction thereof, such person shall be punishable therefor as the law prescribes. Acts 1933, 43rd Leg., p. 428, ch. 166, § 1, subsec. 5a, as added by Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 5.

Subsection 5c expressly repealed all conflicting laws or parts of laws.

Enterprises operating under this article exempt from taxes specified in article 7047f of the Civil Statutes. See paragraph (d) of that article.

Acts 1937, 45th Leg., 1st C.S., p. 1737, ch. 1, § 1, repealed Acts 1933, 43rd Leg., 1st

C.S., p. 32, ch. 10, but did not mention amendments to subsections 5, 5a and 7 by Acts 1935, 44th Leg., p. 804, ch. 344, § 3, and Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 3, § 5.

Authority of Commissioner of Agriculture respecting State-owned jacks and stallions, see Civ.St. art. 51—1.

## CHAPTER EIGHT—TEXAS LIQUOR CONTROL ACT

### I. INTOXICATING LIQUORS

- Art.
- 666—7a. Notice necessary before adoption of penal rule or regulation; hearing; publication of rules and regulations [New].
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- 667—1. Definitions [New].
- 667—2. Where lawful to manufacture or sell beer [New].
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- 667—10. Prohibited hours [New].
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- 667—11. Reports of assessor and collector of taxes [New].
- 667—12. Agent to accept service [New].
- 667—13. Prohibited contributions [New].
- 667—14. Word "saloon" prohibited [New].
- 667—15. Restrictions on consumption [New].
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- 667—17. Blinds and barriers [New].
- 667—18. Refunding fee for unexpired term [New].
- 667—19. Cancellation of license [New].
- 667—20. Hearings [New].
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- 667—22. Appeal; suit to restrain suspension; evidence; effect of cancellation or suspension [New].

Art.

667—23. Beer tax; stamps [New].  
 667—24. Marketing practices [New].  
 667—25. Transportation of beer [New].  
 667—26. Penalty [New].

Art.

667—27. Restraining orders and injunction; violation of injunction or restraining order, effect of [New].

## I. INTOXICATING LIQUORS

### Art. 666—3. Definitions

(a). The term "open saloon" as used in this Act, means any place where any alcoholic beverage whatever, manufactured in whole or in part by means of the process of distillation, or any liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or any place where any such liquors are sold or offered for sale for human consumption on the premises where sold.

(b). It shall be unlawful for any person, whether as principal, agent, or employee, to operate or assist in operating, or to be directly or indirectly interested in the operation of any open saloon in this State.

(c). It shall be unlawful for any person to whom a Wine and Beer Retailer's Permit or Beer Retailer's License has been issued or any officer, agent, servant, or employee thereof to have in his possession on the licensed premises, any distilled spirits or any liquor containing alcohol in excess of fourteen (14) per centum by volume.

(d). Any person who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not more than one year. Any person who is twice convicted under the provisions of this Section shall for the second and all subsequent offenses be punished by fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), and by confinement in the county jail for not less than thirty (30) days nor more than one year. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 1.

Section 50 of the Act of 1937, cited to the text, reads as follows: "If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in either Article I or II of this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the

Legislature hereby declares that it would have passed such remaining portions despite such invalidity."

Section 51 of the amendatory Act of 1937 declared an emergency and provided that the act should take effect from and after September 1, 1937.

### Art. 666—3a. Liquor defined

The following definitions of words and terms shall apply as used in this Act:

"Alcoholic Beverage" shall mean alcohol and any beverage containing more than one-half of one per cent of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted.

"Consignment Sale" shall mean the delivery of alcoholic beverages under any agreement, arrangement, condition, or system whereby the person receiving the same has the right at any time to relinquish possession to or return them to the shipper and whereby title to such remains in the shipper. It shall also mean the delivery of alcoholic beverages under any agreement, arrangement, condition, or system whereby the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver as well as the delivery of alcoholic beverages to a factor or broker or any other

method employed by a shipper or seller whereby any person is placed in actual or constructive possession of alcoholic beverages without acquiring title thereto, or any method employed by a shipper or seller whereby any person designated as the purchaser did not in fact purchase the same. It is not intended that this definition shall exclude any other kind of transaction which in law may be construed as a consignment sale.

“Distilled Spirits” shall mean alcohol, spirits of wine, whiskey, rum, brandy, gin, and any liquor produced in whole or in part by the process of distillation, including all dilutions and mixtures thereof.

“Illicit Beverage” shall mean and refer to any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this Act, or on which any tax imposed by the laws of this State has not been paid and the tax stamp affixed thereto; and any alcoholic beverage possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of the provisions of this Act.

“Liquor” shall mean any alcoholic beverage containing alcohol in excess of four (4) per centum by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, tequilla, mescal, habanero, or barreteago, shall be prima facie evidence that the same is liquor as herein defined.

“Person” shall mean and refer to any natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

“Premise” shall mean the grounds as well as all buildings, vehicles, and appurtenances pertaining thereto, and shall also include any adjacent premises, if directly or indirectly under the control of the same person.

“Wine and vinous liquor” shall mean the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, and berries.

Any definition contained herein shall apply to the same word in any form. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 2.

#### Art. 666—4. Manufacture, sale or possession of liquor unlawful

It shall not be unlawful to manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process any liquor in this State, nor to possess any equipment or material designed for or capable of use for manufacturing liquor, provided that the rights or privileges so to do are granted by any provision of this Act. It is further expressly provided that any rights or privileges granted by the provisions of this Section, as exceptions to the prohibited acts in other sections shall be enjoyed and exercised only in the manner as provided. Any act done by any person which is not granted in this Act is hereby declared to be unlawful. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 3.

(a). It shall be unlawful for any person to manufacture, distill, brew, sell, possess for the purpose of sale, import into this State, export from the State, transport, distribute, warehouse, store, solicit, or take orders for, or for the purpose of sale to bottle, rectify, blend, treat, fortify, mix, or process any liquor in any wet area without first hav-

ing procured a permit. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 4.

(b). It shall be unlawful for any person in any dry area to manufacture, distill, brew, sell, possess for the purpose of sale, import into this State, export from the State, transport, distribute, warehouse, store, solicit or take orders for, or for the purpose of sale to bottle, rectify, blend, treat, fortify, mix, or process any liquor, distilled spirits, whiskey, gin, brandy, wine, rum, beer or ale. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 5.

#### Art. 666—5. Liquor Control Board

There is hereby created a Board named the Texas Liquor Control Board, consisting of three (3) persons, all of whom shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated by the Governor to be Chairman of the said Board, and said members shall receive their actual expenses while engaged in the performance of their duties and a per diem of Ten Dollars (\$10) per day for not exceeding sixty (60) days for any one year. Each member at the time of his appointment and qualification shall be a resident of the State of Texas and shall have resided in said State for a period of at least five (5) years next preceding his appointment and qualification, and he also shall be a qualified voter therein. Of the Members initially appointed each shall hold office from the date of his appointment for the following respective terms, and until their respective successors shall qualify: One member for two (2) years, one for four (4) years, and one for six (6) years from the effective date of the Act. Each member may be initially appointed on or subsequent to the date this Act goes into effect. The Governor, at the time of making and announcing the appointment of said three (3) members, as well as in the commission issued by him to each of them, shall designate which of said members shall serve for each of the said respective terms, and also which shall be the Chairman of the Board. Upon the expiration of each of said terms, the term of office of each member thereafter appointed shall be six (6) years from the time of his appointment and qualification, and until his successor shall qualify. In case any member shall be allowed to hold over after the expiration of his term, his successor shall be appointed for the balance of the unexpired term. Vacancies in said Board shall be filled by the Governor for the unexpired term. Each member shall be eligible for reappointment in the discretion of the Governor.

No person shall be eligible for appointment, nor shall hold the office of member of the Board, nor be appointed by the Board, nor hold any office or position under the Board, who has any connection with any association, firm, person, or corporation engaged in or conducting any alcoholic liquor business of any kind or who holds stocks or bonds therein, or who has pecuniary interest therein, nor shall any such person receive any commission or profit whatsoever from or have any interest whatsoever in any purchase or sales of any alcoholic liquors. The office of the Board shall be in the City of Austin, Texas. The said Board shall meet at such times within the City of Austin as the Board shall determine, and the members thereof shall be entitled to their reasonable expenses for each meeting so attended, and the per diem hereinabove referred to. A majority of the members shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the Board. The Board shall appoint an Administrator who shall serve at the Board's pleasure and who shall

under the supervision of the Board administer the provisions of this Act. He shall receive a salary of Six Thousand Dollars (\$6,000) per annum, and shall execute a bond in the sum of Ten Thousand Dollars (\$10,000) payable to the State of Texas, conditioned as the Board shall require.

The Board or Administrator shall appoint all necessary clerks, stenographers, inspectors, and chemists, and other employees to properly enforce the provisions of this Act.

No person shall be eligible for any appointment who has any financial connection whatever with any person engaged in or conducting any liquor business of any kind, or who holds stock or bonds therein, or who has any pecuniary interest therein, nor shall any such person receive any commission or profit whatever from, or have any interest whatsoever in, the purchases or sales made by persons authorized by this Act to manufacture, purchase, sell, or otherwise deal in the liquor business.

The Administrator shall act as manager, secretary, and custodian of all records, unless the Board shall otherwise order.

The Administrator shall devote his entire time to said office.

The Board or Administrator shall fix the duties, salaries, and wages of all employees authorized by this Act but such compensation, salaries, and wages shall not be greater than the salaries fixed for similar positions and duties in other departments of the State Government. The Board shall likewise have power to require any employee authorized by this Act to give bond for the faithful performance of his duties in such an amount and under such conditions as it may deem adequate and proper. All appointments which have heretofore been made under the terms and provisions of Section 5, Article I, Chapter 467, Acts of the Second Called Session of the Forty-fourth Legislature<sup>1</sup> shall not be affected in any manner by the reenactment of this particular section as herein contained, but all such appointments shall continue as though this section had not been reenacted.

It shall be the duty of the Board, during the month of January of each year, to make a report to the Governor, concerning its administration of this Act. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 5½.

<sup>1</sup> This section.

#### Art. 666—6. Powers and duties of Board

Among others, the functions, powers, and duties of the Board shall include the following:

(a). To supervise, inspect, and regulate every phase of the business of manufacturing, importation, exportation, transportation, storage, sale, distribution, possession for the purpose of sale, and possession of all alcoholic beverages, including the advertising and labeling thereof, in all respects necessary to accomplish the purposes of this Act. The Board is hereby vested with power and authority to prescribe all necessary rules and regulations to that end; to require the filing of such reports and other data by all persons engaged in any phase of the alcoholic beverage business, which it may deem necessary to accomplish the purposes of this Act; to supervise and regulate all licensees and permittees and their places of business in all matters affecting the general public, whether herein specifically mentioned or not, and to authorize its agents, servants, and employees under its direction to carry out the provisions hereof.



(b). To grant, refuse, suspend, or cancel permits or licenses for the purchase, transportation, importation, sale, or manufacture of alcoholic beverages or other permits in regard thereto.

(c). To investigate and aid in the prosecution of violations of this Act and other Acts relating to alcoholic beverages, to make seizures of alcoholic beverages manufactured, sold, kept, imported, or transported in contravention hereof, and apply for the confiscation thereof whenever required by this Act, and co-operate in the prosecution of offenders before any Court of competent jurisdiction.

(d). To exercise all other powers, duties, and functions conferred by this Act, and all powers incidental, convenient, or necessary to enable it to administer or carry out any of the provisions of this Act and to publish all necessary rules and regulations.

(e). In the event the United States Government shall provide any plan or method whereby the taxes on liquor shall be collected at the source, the Board shall have the right to enter into any and all contracts and comply with the regulations, even to the extent of partially or wholly abrogating any provisions hereof which may be in conflict with Federal law or regulations to the end that the Board shall receive the portion thereof allocated to the State of Texas, and to distribute the same as in this Act is provided.

(f). To require by rule and regulation that any liquor sold in this State shall conform in all respects to the advertised quality of such products; to promulgate rules and regulations governing labelling and advertising of all liquors in strict accordance with the labelling and advertising regulations of the Federal Alcohol Administration; to adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages, and to promulgate all such rules and regulations as shall be deemed necessary to fully safeguard the public health and to insure sanitary conditions in the manufacturing, refining, blending, mixing, purifying, bottling, and rebottling of any alcoholic beverage and the sale thereof.

(g). To license, regulate, and control the use of alcohol and liquor for scientific, pharmaceutical, and industrial purposes, and to provide for the withdrawal thereof from warehouses and denaturing plants by regulation, and to prescribe the manner in which the same may be used for scientific research or in hospitals and in sanatoria, in industrial plants, and for other manufacturing purposes, tax-free. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 6.

**Art. 666—7a. Notice necessary before adoption of penal rule or regulation; hearing; publication of rules and regulations**

No rule or regulation for which a penalty is prescribed either by this Act or by the Board, shall be adopted by the Board except after notice and hearing. Notice of such hearing shall be given by publication in three (3) newspapers of general circulation in different sections of the State. Such notice shall specify the date and place of hearing and the subject matter of the proposed rule or regulation and shall constitute sufficient notice to all parties. The date of hearing shall be not less than ten (10) days from the date of publication of notice. At such hearing any person, either by himself or by attorney, may present relevant facts either in support or opposition thereto. The Board shall upon a finding of facts, have the authority and power to adopt, modify, nullify, or alter such rules or regulations.

Upon the final adoption of any rule or regulation, the Board shall cause the same to be published one time in a newspaper of general circulation in this State and the same shall have the force and effect of law as of the date of publication, unless a different date is specified therein. The publication thereof shall be sufficient notice to all parties. Any person who violates any valid rule or regulation or any provision thereof shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the penalty as prescribed in Section 41, Article I of this Act.<sup>1</sup> Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 7a, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 7.

<sup>1</sup> Section 666—41 of this chapter.

**Art. 666—7b. Oath of office; inspectors and representatives; bond**

All inspectors and representatives of the Board shall subscribe to the constitutional oath of office which shall be filed in the office of the Board. The Board or Administrator is empowered to commission such number of its inspectors and representatives which it deems necessary to enforce the provisions of this Act. Such commissioned inspectors and representatives shall have all the powers of a peace officer coextensive with the boundaries of this State. Such commissioned inspectors and representatives shall make and execute such bond as may be required by the Board. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 7b, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 8.

**Art. 666—7c. Additional Assistant Attorneys General to enforce Act; stenographers; offices**

For the purpose of enabling the Board to more efficiently enforce the provisions of this Act, the Attorney General of the State of Texas is hereby directed to appoint as many as six (6) Assistant Attorneys General as the Board may determine to be necessary; and the Attorney General and such Assistants shall prosecute all suits requested by the Board and defend all suits against the Texas Liquor Control Board. The Board is directed to provide said Assistant Attorneys General with the necessary stenographers and office space; and such Assistant Attorneys General shall be paid by the Board out of funds appropriated to it for the purposes of administration of this Act and their compensation shall be upon the same basis as Assistant Attorneys General devoting their time to general State business. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 7c, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 9.

**Art. 666—10. Publication of notice of application for permit**

Every applicant for a Pharmacist's Medicinal, Brewer's, Distiller's, Winery (except Class B Winery), Wholesaler's, Class B Wholesaler's, Wine Bottler's, or Package Store Permit under this Act shall give notice of such application by publication for two (2) consecutive issues in a newspaper of general circulation published in the city or town in which applicant's place of business is located. Provided, however, that in such instances where no newspaper is published in the city or town, then the same shall be published in a newspaper of general circulation published in the county where the applicant's business is located, and if no newspaper is published in the county, the notice shall be published in a qualified newspaper which is published in the closest neighboring county and circulated in the county of applicant's residence. Such notice shall be printed in ten (10) point black face type and shall set forth the type of permit to be applied for, the exact location

of the place of business, the name of the owner or owners thereof, and if operating under an assumed name, the trade name together with the names of all owners, and if a corporation, the names and titles of all officers. The cost of such notice shall be borne by the applicant. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 10.

#### Art. 666—11. Refusal of permit; grounds

The Board or Administrator shall refuse to issue a permit to any applicant either with or without a hearing if it has reasonable grounds to believe and finds any of the following to be true:

(1). That the applicant has been convicted for the violation of any provision of this Act during the two (2) years next preceding the filing of his application.

(2). That the applicant has violated any provision of this Act or any rule or regulation of the Board during the previous permit period.

(3). That the applicant has failed to answer or has incorrectly answered any of the questions on the application.

(4). That the applicant is indebted to the State for any taxes, fees, or penalties imposed by this Act or by any rule or regulation of the Board.

(5). That the applicant is not of good moral character, or that his reputation for being a peaceable law-abiding citizen in the community where he resides is bad.

(6). That the place or manner in which the applicant may conduct his business is of such a nature, which based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency warrants a refusal of a permit.

(7). That the applicant is in the habit of using liquor to excess.

(8). That the Board or Administrator believes or has reasons to believe that the applicant will sell or knowingly permit any agent, servant, or employee to unlawfully sell liquor in dry area.

(9). When the word applicant is used in (1) to (8) in this Section, it shall also mean and include each member of a partnership or association and all officers and the owner or owners of the majority of the corporate stock of a corporation. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 11.

#### Art. 666—12. Cancellation or suspension of permit; grounds

The Board or Administrator may cancel or may suspend for any period of time not exceeding sixty (60) days, after notice and hearing any such permit granted if it is found that any of the following is true:

(1). That the permittee has at any time been convicted for the violation of any provision of this Act.

(2). That the permittee has violated any provision of this Act or any rule or regulation of the Board at any time.

(3). That the permittee has made any false or misleading representation or statement in his application.

(4). That the permittee is indebted to the State for any taxes, fees, or penalties imposed by this Act or by any rule or regulation of the Board.

(5). That the permittee is not of good moral character, or that his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad.

(6). That the place or manner in which applicant conducts his business is of such a nature which, based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, warrants the cancellation or suspension of the permit.

(7). That the permittee is not maintaining an acceptable bond.

(8). That the permittee maintains a noisy, lewd, disorderly, or insanitary establishment or has been supplying impure or otherwise deleterious beverages.

(9). That the permittee is insolvent or incompetent or physically unable to carry on the management of his establishment.

(10). That the permittee is in the habit of using liquor to excess.

(11). That either the permittee, his agents, servants, or employees have misrepresented to a customer or the public any liquor sold by him.

(12). Where the word "permittee" is used in (1), (2), (3), (5), (6), and (10), of this Section it shall also mean and include each member of a partnership or association and each officer and the owner or owners of the majority of the corporate stock of a corporation. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, §.12.

**Art. 666—12a. Hearing as to cancellation or suspension of permit; notice; procedure**

(1). The Board or Administrator shall have the power upon its own motion, and it is hereby made its duty upon petition of any Mayor, Chief of Police, or any City Marshal, or the City Attorney of any city or town, or the County Judge, Sheriff, or County or District Attorney of any county of this State wherein may be located the place of business of any permittee complained of, which said petition shall be supported by the sworn statement of at least one credible person, to fix a date for hearing and give notice thereof to any permittee complained of for the purpose of determining whether the permit should be cancelled or suspended and notify such permittee that he may appear to show cause why such permit should not be cancelled or suspended in accordance with the provisions of this Act.

(2). In all cases where application is made for a permit, the Board or Administrator shall give due consideration to the recommendations of any of the above enumerated officers in granting or refusing such permit. In all instances where a protest against the issuance of a permit is made to the Board by the above enumerated officers, if upon a hearing or upon any finding of facts, it is determined that the issuance of a permit would be in conflict with the requirements as set out in this Act, the Board or Administrator shall enter its order accordingly. A copy of any order or refusal shall be mailed or delivered immediately to the applicant which said order shall set forth the reasons for refusal.

(3). The Board or Administrator may designate any of its members or other representatives to conduct any hearing, authorized by this Act, make a record thereof, and the Board or Administrator may upon such record render its decision as though the hearing had been held before all members of the Board or Administrator. The Board may prescribe its own rules of procedure and evidence.

(4). All notices of hearing for refusal, cancellation, or suspension may be served personally or by any representative of the Board or by sending the same by United States registered mail addressed to the person cited at his last known address and no other notice shall be necessary. At least three (3) days notice shall be given in all instances

where a hearing is provided for by this Act. Notice of cancellation or suspension stating the reason therefor, shall be served upon the permittee or upon whatever person may be in charge temporarily, or otherwise, of the licensed premises, or shall be affixed to the outside of the door of the licensed premises, or shall be sent by United States registered mail addressed to such permittee or licensee at the licensed premises, or said cancellation notice shall be published by the Board once a week for three (3) consecutive weeks in the county in which the licensed premises are located, or if no newspaper is published in the county, in a newspaper in a neighboring county. Cancellation or suspension shall take effect upon affixing, service, delivery, or first publication of such notice. Such affixing, service, or delivery, or publication of a cancellation or suspension shall be adequate notice to all parties concerned.

(5). All notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. It is further provided that in all suits by the State or Board or in which the State or Board is a party or parties, a transcript from the papers, books, records, and proceedings of the Board purporting to contain a true statement of accounts between the Board or the State and any person, and all rules, regulations, orders, audits, bonds, contracts, or other instruments relating to or connected with any transaction had between the Board and any person, when certified by the Administrator or Chairman of the Board to be true copies of the originals on file with the Board and authenticated under the seal of the Board shall be admitted as prima facie evidence of their verity, existence, and validity and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in Court; but when any suit is brought upon a bond or other written instrument, executed by any person and he shall by plea under oath deny the execution of such instrument, the Court shall require the production and proof of the same.

In the event the Attorney General shall file suit or claim for taxes and attach or file as an exhibit any report or audit of said permittee or licensee, and an affidavit made by the Administrator or his representative that the taxes shown to be due by said report or audit are past due and unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

A certificate under the seal of the Board executed by any member or the Administrator setting forth the terms of any order, rule, regulation, bond, or other instrument referred to in this Section and that the same had been adopted, promulgated, and published or executed and filed with the Board and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation and the publication thereof, without further proof of such promulgation, adoption, or publication and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to in this Section.

(6). It shall be the duty of the Board by its printed rules and regulations entered upon its minutes to immediately specify the duties and powers of the Administrator. In all instances whereby provisions of

this Act, concurrent powers and duties are imposed upon the Board and Administrator, the Board shall designate such powers and duties which it delegates to the Administrator. All orders, decisions, and judgments entered and rendered by the Administrator in matters upon which he has been empowered to act shall not be subject to change, review, or revision by the Board. All other concurrent powers and duties which are not specifically delegated to the Administrator by the Board's order shall be considered as retained by the Board itself and all orders, decisions, and judgments rendered and entered by the Board shall not be subject to change, review, or revision by the Administrator. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 12a, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 13.

#### Art. 666—13. Permit as personal privilege

Any permit granted under this Act shall be a purely personal privilege, and except wine and beer retailers' permits issued to other than a railway dining, buffet, or club car, good for the year in which issued, and ending on August 31st of each year at 12 o'clock midnight, and all permits shall be revocable for the causes herein stated, subject to appeal as hereinafter provided, and shall not constitute property, nor shall it be subject to execution, nor shall it descend by the laws of testate or intestate devolution, but shall cease upon the death of the permittee; provided, that the Board, by regulation may provide for a time and manner in which the successor in interest of any deceased, insolvent, or bankrupt permittee or receiver may dispose of liquors left on hand by the permittee.

It is expressly provided that the acceptance of a permit or license issued under either Article I<sup>1</sup> or Article II<sup>2</sup> of this Act shall constitute an express agreement and consent on the part of the permittee or licensee that the Board, any of its authorized representatives or agents, or any peace officer shall have at all times the right and privilege of freely entering upon the licensed premises for the purpose of conducting any investigation or for inspecting said premises and for the further purpose of performing any duty imposed upon the Board, its representatives, or any peace officer by this Act or by any rule and regulation of the Board. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 14.

<sup>1</sup> Articles 666—1 et seq.

<sup>2</sup> Articles 667—1 et seq.

#### Art. 666—14. Review of decision of Board by appeal to District Court

Unless specifically denied herein an appeal from any order of the Board or Administrator refusing, cancelling, or suspending a permit or license may be taken to the District Court of the County in which the aggrieved licensee or permittee, or the owner of involved real or personal property may reside. In all other suits against the Board venue shall be in Travis County, Texas. The proceeding on appeal shall be against the Board alone as defendant and the trial shall be de novo under the same rules as ordinary civil suits, with the following exceptions, which shall be considered literally, viz.:

a. All appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision or ruling of the Board or Administrator.

b. Such proceedings shall have precedence over all other causes of a different nature.

c. All such causes shall be tried before the Judge within ten (10) days from the filing thereof, and neither party shall be entitled to a jury.

d. The order, decision or ruling of the Board or Administrator may be suspended or modified by the District Court pending a trial on the merits, but the final judgment of the District Court shall not be modified or suspended pending appeal. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 15.

#### Art. 666—15. Classification of permits

Permits shall be of the following classes:

(1). Brewer's Permit. A Brewer's Permit shall authorize the holder thereof to:

(a). Manufacture, bottle, package, label, and sell malt liquors. The privileges granted to a brewer are confined strictly to malt liquor manufactured under his permit;

(b). Sell same in this State to wholesale permit holders only;

(c). Sell same out of State to qualified persons.

The annual permit fee shall be One Thousand Dollars (\$1,000).

(2). Distiller's Permit. A Distiller's Permit shall authorize the holder thereof to:

(a). Manufacture and rectify distilled spirits except alcohol, and bottle, package, label, and sell same. The privileges granted to a distiller are confined strictly to distilled spirits manufactured and rectified under his permit;

(b). Sell same in this State to the holders of Wholesaler's Permits only;

(c). Sell same out of State to qualified persons;

(d). Import distilled spirits for manufacturing purposes only.

The annual permit fee shall be One Thousand Dollars (\$1,000).

(3). Class A Winery Permit. A Class A Winery Permit shall authorize the holder thereof to:

(a). Manufacture, bottle, label, package, and sell wine containing not more than twenty-four (24) per centum of alcohol by volume;

(b). Manufacture and import grape brandy for fortifying purposes only and to be used only on his licensed premises;

(c). Sell same in this State to permit holders authorized to sell same and to the ultimate consumer in unbroken packages for off-premises consumption;

(d). Sell same out of State to qualified persons;

(e). Blend wines and for that purpose only to import wines. In such instances the State tax on such imported wines shall not accrue until the wine has been used for blending purposes and the resultant product placed in containers for sale.

Such permit to be granted only upon presentation of a "Winemaker's and Blender's Basic Permit" of the Federal Alcohol Administration.

The annual permit fee shall be Fifty Dollars (\$50).

(4) Class B Winery Permit. A Class B Winery Permit shall authorize the owner thereof to:

(a). Manufacture, bottle, package, label, and sell wine from grapes, fruits, and berries grown on the permit holder's own premises only and containing not more than twenty-four (24) per centum of alcohol by volume;

(b). Manufacture and import grape brandy for fortifying purposes only and to be used only on his licensed premises;

(c). Sell same in this State to any permit holder authorized to sell the same and to the ultimate consumer in unbroken packages for off-premises consumption;

(d). Sell same to authorized persons out of State.

Such permit to be granted only upon presentation of a "Winemaker's and Blender's Basic Permit" of the Federal Alcohol Administration.

The annual fee shall be Ten Dollars (\$10).

(5). Rectifier's Permit. A Rectifier's Permit shall authorize the holder thereof to:

(a). Rectify, purify, and refine distilled spirits and wines other than vermouth by any process other than as provided for on distillery premises;

(b). Mix wines, distilled spirits, or other liquors;

(c). Bottle, label, package, and sell his finished products;

(d). Sell same in this State to wholesale permit holders only;

(e). Sell same out of State to qualified persons;

(f). Import distilled spirits for rectification purposes but not for resale.

The annual permit fee shall be One Thousand Dollars (\$1,000).

(6). Wholesaler's Permit. A Wholesaler's Permit shall authorize the holder thereof to:

(a). Purchase and import liquor from distillers, brewers, wineries, wine bottlers, rectifiers, manufacturers, and their agents and purchase from other wholesalers within the State;

(b). Sell liquor in original containers in which received in this State to retailers and wholesalers authorized to sell same;

(c). Sell liquor out of State to qualified persons;

(d). It is provided that a person applying for a wholesaler's permit shall be authorized to include in a single application his petition for such permit, as well as for private storage, storage in a public bonded warehouse, and private carrier's permit, and any other permit which he is qualified to receive under the provisions of this Act. Provided, however, that such wholesaler shall pay the fees prescribed by this Act for each such permit covered in such wholesaler's application. This same subdivision shall apply to a Class B Wholesaler's, Rectifier's, Brewer's, Distiller's, Class A Winery, and Class B Winery Permits.

The annual fee shall be One Thousand, Two Hundred and Fifty Dollars (\$1,250).

(7). Class B Wholesaler. A Class B Wholesaler's Permit shall authorize the holder thereof to:

(a). Purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and bottlers, and purchase from other wholesalers within the State;

(b). Sell same in original containers in which received in this State to retailers and wholesalers authorized to sell same;

(c). Sell same out of State to qualified persons.

The annual fee shall be Two Hundred Dollars (\$200).

(8). Package Store Permit. A package store permit shall authorize the holder thereof to:

(a). Purchase liquor from the holders in this State of Winery, Wholesaler's, Class B Wholesaler's, and Wine Bottler's Permits;

(b). Sell on or from licensed premises at retail to consumer for off-premises consumption only and in unbroken packages and unbroken containers only;

(c). Sell malt and vinous liquors in original containers of not less than six (6) ounces;



(d). Sell vinous liquors but in quantities of not more than five (5) gallons in original containers in any single transaction;

(e). Any person holding more than one package store permit may designate one of the licensed premises as the place for storage of liquor and he shall be privileged to transfer liquor from such storage to his other licensed premises under such rules as shall be prescribed by the Board.

The annual fee for a package store in cities and towns shall be based upon the population according to the last preceding Federal Census as follows:

Population	Fee
25,000 or less	\$ 125.00
25,001 to 75,000	175.00
75,001 or more	250.00

The annual fee for a package store outside of cities and towns shall be One Hundred Twenty-five (\$125.00) Dollars, except the annual fee for a package store outside of any incorporated city or town and within two (2) miles of the corporate limits shall be the same as the fee required in said incorporated city or town.

The annual fee for a package store to sell wine only in cities and towns shall be based on population according to the last preceding Federal Census as follows:

Population	Fee
2,000 or less	\$ 5.00
2,001 to 5,000	7.50
5,001 to 10,000	10.00
10,000 or more	12.50

The annual fee for a package store to sell wine only outside of cities and towns shall be Five (\$5.00) Dollars. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 1.

Section 21 of Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, declared an emergency and provided that the Act should take effect from and after its passage.

(9). **Agent's Permit.** An Agent's Permit shall authorize the holder thereof to:

(a). Represent any person who is authorized to sell liquor other than a retailer;

(b). Solicit and take orders for the sale of liquor from any authorized permit holder;

(c). Carry samples of liquor in containers not less than one-half pint.

Any person acting as agent or salesman for the sale of or for taking or soliciting orders for the sale of any liquor irrespective of whether such sale is to be made within or without the State is required to procure an agent's permit. It is not intended that this shall apply to the employee of a permit holder who sells liquor and who remains on the licensed premises in making such sale.

The annual fee for such permit shall be Five Dollars (\$5).

(10). **Industrial Permit.** No other provisions of this Act shall apply to alcohol intended for industrial, medicinal, mechanical, or scientific purposes. Industrial permits may be issued to persons desiring to import, transport, and use alcohol for use in the manufacturing and sale of any of the following, tax-free:

(1). Denatured alcohol;

(2). Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(3). Flavoring extracts, syrups, condiments, and food products;

(4). Scientific, chemical, mechanical, industrial, and medicinal products and purposes.

It shall be unlawful for any person to knowingly sell any of the products enumerated in paragraphs (1), (2), (3), and (4) for beverage purposes or to sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purpose.

It shall be unlawful for any person to purchase, transport, or use alcohol for any purpose enumerated in this Section unless and until he shall have secured an industrial permit. It is provided however that the following are exempt from procuring such permit;

(a). Druggists or pharmacists in the filling of prescriptions issued by a physician in the legitimate practice of medicine;

(b). All State institutions;

(c). All bona fide or chartered schools, colleges, or universities for scientific or laboratory use;

(d). All hospitals, sanitoria, or other bona fide institutions for the treatment of the sick;

(e). Persons who purchase, sell, or possess denatured alcohol after the same has been produced and so long as it retains its identity as such.

The annual fee for an Industrial Permit shall be Ten Dollars (\$10).

(11). Carrier Permit. The word carrier when used in this Section shall mean and include water carriers, airplane lines, all steam, electric, and motor power railway carriers, and common carrier motor carriers operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas or such certificates issued by the Interstate Commerce Commission. The holders of such certificates shall be authorized to transport liquor into and out of this State and between points within this State. Such carriers shall furnish such information concerning the transportation of liquor as may be required by the Board. The restrictions contained in this Section shall not apply when in the course of an interstate or foreign shipment of liquor it is necessary to cross the State in the course of such transportation.

The annual fee shall be Five Dollars (\$5).

(12). Private Carrier Permit. Brewers, distillers, wineries, rectifiers, wholesalers, Class B wholesalers, and wine bottlers permittees shall be entitled to transport liquor from the place of sale or distribution to the purchaser, upon vehicles owned in good faith by such permittees when such transportation is for a lawful purpose; provided, however, that such permittees shall not be permitted to engage in the business of transporting for hire such liquor in violation of the motor carrier laws of this State, and any such permittee desiring to engage in such business for hire shall first secure a certificate or permit, as the case may be, from the Railroad Commission of Texas under the terms of the motor carrier laws, and shall be required to comply with the provisions of such laws. Motor vehicles used for such transportation shall be fully described in the application for a private carrier permit and such application shall contain all information which shall be required by the Board. All vehicles used for such transportation within the State by such permittees shall have printed or painted on said vehicles such designation as may be required by the Board. It shall be unlawful for any such permittee above named to transport liquors in any vehicle not fully described in his application for a permit.

The annual fee for such permit shall be Five (\$5.00) Dollars. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 2.

(13). Local Cartage Permit. The Board is hereby authorized to issue Local Cartage Permits to warehouse or transfer companies desiring to transport liquor for hire within the corporate limits of any city or town within this State. It shall be unlawful for any person to transport liquor for hire within any city or town unless and until he shall have secured such permit or to transport the same in violation of the motor carrier laws of this State. In the case of local cartage, liquors shall not be transported by the holder of such Local Cartage Permit unless and until a description of each vehicle used in such transportation shall be furnished as may be required by the Board; and each such vehicle shall be plainly marked or lettered in such manner as to plainly indicate that such vehicle is being used for the transportation of liquors by the holder of a Local Cartage Permit. The transportation of liquor by the holder of a Local Cartage Permit in any vehicle not so described and marked shall be unlawful and shall constitute grounds for the cancellation of such permit. It shall be unlawful for the holder of a Local Cartage Permit to transport liquor for hire between incorporated cities or towns in this State unless and until he shall have fully complied with the requirements of the motor carrier laws of this State governing the issuance of "carrier" permits.

The annual fee for Local Cartage Permits shall be Five Dollars (\$5).

(14). Bonded Warehouse Permits. A public bonded warehouse not located in dry area and which derives at least fifty (50) per cent of its gross revenue in a bona fide manner during a period of each three (3) months from the storage of goods or merchandise other than liquors shall be qualified to obtain and hold a Bonded Warehouse Permit. Such permit shall authorize the holder thereof to store liquors for any permittee who holds a permit to store in such public bonded warehouse. The holder of Bonded Warehouse Permits shall furnish such information concerning the liquor stored and withdrawn as may be required by the Board.

The annual fee for such permits shall be One Hundred Dollars (\$100).

(15). Storage Permit. The holders of brewery, distillery, winery, rectifier, wholesaler, wine bottler, and Class B Wholesaler permits shall be authorized to procure Storage Permits. Storage Permits may be issued to store in a public bonded warehouse for which a permit has been issued as well as to store in private warehouses owned and operated by the applicant. A permit must be procured for each place of storage. No Storage Permit shall be granted in a dry area. No permit need be procured by the above named permit holders for the storage of stock in trade kept on the licensed premises. No additional fee shall be paid for storage permits.

(16). Wine and Beer Retailer's Permit. The Board is authorized to issue Wine and Beer Retailer's Permits. The holders of such permits shall be authorized to sell for consumption on or off the premises where sold, but not for resale, vinous and malt beverages containing alcohol in excess of one-half of one per cent by volume and not more than fourteen (14) per cent of alcohol by volume. All such permits shall be applied for and issued, unless denied, and fees paid upon the same procedure and in the same manner and upon the same facts and under the same circumstances, and for the same duration of time, and shall be renewable in the same manner, as required and provided to govern application for an issuance of Retail Beer Dealer's Licenses under Article II<sup>1</sup> of this Act, and shall be subject to cancellation or suspension for any of the reasons that a Retail Beer Dealer's License may be cancelled or suspended, and upon the same procedure. The holders of Wine and Beer Retailer's Per-

mits shall also be subject to all provisions of Section 22,<sup>2</sup> Article II of this Act. All alcoholic beverages which the holders of such permits are authorized to sell may be sold with the same restrictions as provided in Article II governing the sale of beer, as to prohibited hours, local restrictions, age of employees, installation or maintenance of barriers or blinds in openings or doors, prohibition of the use of the word 'saloon' in the signs or advertising, and subject to the same restrictions upon consumption of wine as provided for beer in the case of Retail Beer Dealers in Section 15<sup>3</sup> of Article II of this Act. For the violation of any applicable provisions of Article II, the holders of such permits shall be liable for penalties provided in Article II; for the violation of any other provision of this Act the holders of such permits shall be subject to penalties provided in Article I<sup>4</sup> of this Act.

The annual fee for such a permit shall be Thirty (\$30.00) Dollars and shall be distributed in the manner provided for the distribution of fees derived under Article II of this Act; provided, however, that a Wine and Beer Retailer's Permit may be issued for a railway dining, buffet, or club car upon payment of a fee of Five (\$5.00) Dollars for each car; provided, however, that application therefor and the payment of fee shall be made direct to the Board; and provided further that any such permit for a railway dining, buffet, or club car shall be inoperative in any dry area as the same is defined in this Act. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 3.

<sup>1</sup> Article 667—1 et seq.

<sup>2</sup> Article 667—22.

<sup>3</sup> Article 667—15.

<sup>4</sup> Article 666—1 et seq.

(17). Wine Bottler's Permit. A Wine Bottler's Permit shall authorize the holder thereof to:

- (a). Purchase and import wine;
- (b). Bottle, re-bottle, label, package, and sell wine to permit holders in this State authorized to purchase and sell the same;
- (c). Sell same to qualified persons out of the State;
- (d). Withdraw wine from a container without State tax stamps and transfer the same to other containers, and affix the State tax stamps to such containers before making a sale.
- (e). Keep a permanent record of every purchase and sale, showing the name of the person bought from and sold to, the gallonage and the per centum of alcohol by volume.

The annual permit fee shall be One Hundred and Fifty Dollars (\$150).

(18). Medicinal Permits. Retail Pharmacists shall be entitled to receive medicinal permits and sell or dispense liquor for medicinal purposes only. The holders of such permits are authorized to purchase liquor from holders of wholesaler's permits in this State. Any pharmacy for which a permit is sought must be a bona fide pharmacy registered with the State Board of Pharmacy; must employ and have on duty at all times a registered pharmacist and must have been in operation as a pharmacy for at least two (2) years in the particular political subdivision in which a permit is sought.

It shall be unlawful for any holder of a medicinal permit, his agents, servants, or employees to sell or dispense any liquor except upon a prescription issued by a physician licensed to practice medicine in this State.

It shall be unlawful for any physician who is not licensed to practice medicine for the care and treatment of human ailments in this State to prescribe liquor as medicine for any person.

It shall be unlawful for any physician to prescribe liquor for any person, and for any person to sell or dispense liquor under a prescription for any other than medicinal purposes.

It shall be unlawful for any person to sell or deliver any liquor from the premises for which a Medicinal Permit has been issued, unless the person making such sale or delivery shall have physical possession of the prescription for such liquor.

It shall be unlawful for any physician to prescribe more than one pint of liquor to any person in any one day.

Prescriptions for liquor must be signed by the physician and must bear the date of issuance, the name and address of the patient, and the directions for use. The permittee, who fills a prescription for liquor, is charged with the duty of preserving such prescription for a period of at least two (2) years and the same shall be open for inspection at any time upon request by any authorized representative of the Board. All Medicinal Permit holders shall make and keep such other records as may be required by the Board, relative to receipts and sales of liquor. It is specifically provided that only the holders of Medicinal Permits are authorized to sell and dispense liquor for medicinal purposes. It shall be unlawful for any pharmacist to knowingly fill a liquor prescription bearing a fictitious name, for anyone.

The annual permit fee for a Medicinal Permit to pharmacies in dry areas shall be Fifty Dollars (\$50) and in wet areas the annual fee shall be the same as the annual fee for a package store.

Medicinal Permits may also be issued by the Board to hospitals, sanitoria, and like institutions for the care and treatment of the sick. The holders of such permits are authorized to purchase liquor from holders of wholesaler's permits in this State, and such hospitals, sanitoria, and other like institutions may sell or dispense the same for medicinal purposes only. The holders of such permits may dispense medicinal liquor at any time but only to patients or inmates confined or under treatment therein, but in no event except under the direction of licensed physicians. The annual fee for hospitals, sanitoria, and like institutions shall be One Dollar (\$1) regardless of when issued and no bond shall be required.

It shall be unlawful for any pharmacist, owner, or operator of a pharmacy holding a medicinal permit to employ or compensate in any manner any physician in this State for writing a prescription for medicinal liquor. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 16.

<sup>1</sup> Article 667—16 of this title.

#### Art. 666—15a. Sacramental wine

Nothing in this Act shall be construed as limiting the right of any minister, priest, or rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source whatsoever, whether from within the limits of the State of Texas or from outside the State; nor shall any fee or tax be charged, directly or indirectly, for the exercise of this right. The Board shall have the power and authority to make rules and regulations concerning the importing of any such wine, for the purpose of preventing any unlawful use of such right. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 20½.

For section 15a as added to Article I 1053, ch. 448, § 17, see art. 666—15a1, post, of Acts 1935 by Acts 1937. 45th Leg., p. and note.

**Art. 666—15a1. Commissioners Courts and cities and towns authorized to levy fee on certain permittees; permits displayed; penalty**

Except as to Agent's, Industrial, Carrier's, Private Carrier's, Local Cartage, and Storage Permits, and as to such Wine and Beer Retailer's Permits as shall be issued to operators of dining, buffet, or club cars, and Class "B" Winery Permits, the Commissioners Court of each county in this State shall have the power to levy and collect from every person that may be issued a permit hereunder in said county a fee equal to one-half of the State fee; and the city or town wherein the permittee is domiciled shall have the power to levy and collect a fee not to exceed one-half of the State fee, but no other fee or tax shall be levied by either. Nothing herein contained shall be construed as preventing the levying, assessing, and collecting of general ad valorem taxes on the property of said persons. All permits shall be displayed in a conspicuous place at all times on the licensed premises. Any permittee or licensee who engages in the sale of any alcoholic beverage without having first paid the fees which may have been levied by the county or city as herein provided shall be guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200). Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 15a1, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 17.

Section 17 of the Acts of 1937, cited to the text, purports to amend Article I of Acts 1935, cited to the text, "by adding thereto a new section to be known as Section 15(a)." However, as such Article

I already contains a section 15a, which appears as art. 666—15a of this title, the new section is set out as art. 666—15a1 of this title.

**Art. 666—15b. Fees payable in advance for year; exceptions; computation of time; separate outlets; refunds**

All permit fees levied by this Act except Wine and Beer Retailer's Permits issued to other than railway dining, buffet, or club cars shall be paid in advance for one year unless such fee be collected for only a portion of the year. In such event, the fee required shall cover the period of time from the date of the permit to midnight of August 31st succeeding, and only the proportionate part of the fee levied for such permit shall be collected. The fractional part of any month remaining shall be counted as one month in calculating the fee that shall be due. A separate permit shall be obtained and a separate fee paid for each outlet of liquor in this State. No refund of permit fees shall for any reason be made by the Board unless the owner thereof is prevented from continuing in business by reason of the result of a local option election. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 15b, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 18.

**Art. 666—15c. Application for permits other than wine and beer retailer's permits**

(1) All permits provided for in Article I of this Act, except Wine and Beer Retailer's Permits other than for railway dining, buffet, or club cars shall be applied for and obtained from the Board. Notice of all applications filed with the Board except Wine and Beer Retailer's, Carrier's, Private Carrier's, Industrial, Agent's, Bonded Warehouse, and Storage Permits shall be given to the County Judge of the county wherein applicant's place of business is located. Such notice shall be given by the Board. The Board shall prepare and furnish forms for all such applications. Each application shall be accompanied by a cashier's

check or a money order for the amount of the fee due the State, payable to the order of the State Treasurer. In the event such application is rejected, such check or money order shall be returned to the applicant.

(2). All applications for permits and licenses as provided in this Act shall be sworn to before any person who is authorized by law to administer an oath. All applications for permits for the year beginning September 1, 1937, and succeeding years shall be made on forms furnished by the Board. Such forms shall require of each applicant all information demanded by the provisions of this Act. For succeeding permit years, the Board is authorized to grant permits to applicants, who were permit holders for the previous period or a part thereof, upon filing with the Board a statement in affidavit form, that the facts and representations in the application on file are true and correct; provided however, that the Board or administrator shall have the power to require any other additional information. Forms for such affidavit shall be furnished by the Board. For succeeding permit years, after the one beginning September 1, 1937, any applicant for a permit who is privileged to procure a permit upon filing of the affidavit as hereinbefore set out, shall not be required to again publish notices as is required of original applicants, but upon payment of the proper fee and the filing of the proper bond and affidavit, the Board is authorized to issue such permit. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 15c, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 19; amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 4.

**Art. 666—15d. Loss of permit; duplicate or corrected permit; sworn statement of corporate stock ownership; penalty**

In case of loss or destruction of a permit or in case it is necessary to make any change in any such permit the Board is authorized to issue a duplicate or corrected permit. The Board shall have the power and authority to require at any time any officers or officer of a corporation, holding a permit or license under either Article I<sup>1</sup> or Article II<sup>2</sup> of this Act, to file a sworn statement showing the actual owners of its corporation stock, the amount of stock owned by each, the officers of such corporation, and all information concerning the qualifications of such officers and of the actual owners of such stock. Any person making any false statement therein shall be deemed guilty of perjury and punished as provided in this Act. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 15d, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 20.

<sup>1</sup> Articles 666—1 et seq.

<sup>2</sup> Article 667—1 et seq.

**Art. 666—16. Surety company bonds required; amount**

All bonds required by this Act shall be executed by a surety company duly authorized and qualified to do business in this State. The Board shall not cancel any surety bond until said surety company shall have paid and discharged in full all of its liability upon said bond to the State to the date of said cancellation. The holders of all permits, except carriers and wine and beer retailers, shall be required to make bonds in sums of not less than One Thousand Dollars (\$1,000) and not exceeding Twenty-five Thousand Dollars (\$25,000).

The Board in its discretion may fix the amount of bond which shall be required for each class of permittees. All bonds required of permittees shall be payable to the State of Texas conditioned that so long as the applicant holds such permit unrevoked he will not violate any

of the laws of this State relative to the traffic in, transportation, sale, or delivery of liquor or any of the valid rules or regulations of the Board, and in the case of such permittees as are required to account for taxes and fees that such permittees will account for and pay all permit fees and taxes levied by this Act. All bonds required of permittees shall be payable in Travis County, Texas. In all instances where other permits are required, incidental to the operation of a business for which a basic permit is procured, the Board may in its discretion accept one bond to support all such permits and in such amounts as it may require. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 21.

**Art. 666—17. Unlawful acts of permittees and others enumerated**

(1). It shall be unlawful for any person holding a package store permit, or owning an interest in a package store, to have any interest, either directly or indirectly, in a Wine and Beer Retailer's Permit, or Beer Retailer's License, or the business thereof.

(2). It shall be unlawful for any person to hold or have an interest in more than five (5) package stores or the business thereof. It shall further be unlawful for any person to hold or have an interest in more than five (5) package store permits.

(3). It shall be unlawful for any person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, winery, or wine bottler, or any agent, servant, or employee:

(a). to own or have an interest, directly or indirectly, in the business, premises, equipment, or fixtures of any retailer;

(b). to furnish, give, or lend any money, service, or other things of value, or to extend unusual credit terms to any retailer, or to any person, for the use, benefit, or relief of such retailer, or to guarantee the fulfillment of any financial obligation of any retailer;

(c). to make or enter or offer to enter into an agreement, condition, or system, the effect of which will amount to the shipment and delivery of alcoholic beverages on consignment;

(d). to furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to any retailer;

(e). to pay or make any allowances to any retailer for a special advertising or distribution service, or to allow any excessive discounts;

(f). to offer any prize, premium, gift, or other similar inducement to any retailer or consumer.

(4). It shall be unlawful for any person operating under a permit under Article I<sup>1</sup> of this Act to refuse to allow the Board, or any authorized representative of said Board, or any peace officer upon request to make a full inspection or investigation of the licensed premises. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 5.

<sup>1</sup> Article 666—1 et seq.

(5). It shall be unlawful for any person to employ anyone under twenty-one (21) years of age to sell, handle, transport, or dispense or to assist in selling, handling, transporting, or dispensing any liquor unless otherwise provided.

(6). It shall be unlawful for any person who holds a permit under Article I<sup>1</sup> of this Act to contribute any money or any thing of value toward the campaign expenses of any candidate for any office in this State. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 6.

<sup>1</sup> Article 666—1 et seq.

(7). It shall be unlawful for any person to possess, buy, sell, or offer to buy or sell any empty carton, case, package, keg, barrel, bottle,



or any other kind of container whereon the State tax stamp has not been mutilated or defaced.

(8). It shall be unlawful for any person to break or open any container containing liquor at, on, or near the premises of a package store.

(9). It shall be unlawful for any person to sell, barter, exchange, deliver, or give away any drink or drinks of liquor to any person from a package or container that has for any reason been opened or broken at, on, or near the premises of a package store.

(10). It shall be unlawful for any person to fail or refuse to comply with any requirement of this Act or with any valid rule and regulation of the Board.

(11). It shall be unlawful for any person, directly or indirectly, to be interested in, connected with, or be a party to a consignment sale as herein defined.

(12). It shall be unlawful for any person to have in his possession or transport in this State any illicit beverage.

(13). It shall be unlawful for any person to import, sell, offer for sale, barter, exchange, or possess for the purpose of sale any liquor the container of which contains less than one-half pint; provided, however, that in the case of malt or vinous liquors a six (6) ounce container shall be the minimum.

(14). It shall be unlawful for any person to have curtains, hangings, signs, or any other obstruction which prevents a clear view of the interior of any package store; provided, however, that this shall not apply to a drug store which holds a package store permit so as to prevent the display of drug merchandise.

(15). It shall be unlawful for any person to sell or offer to sell any alcoholic beverage that shall have been authorized by any permit or license held by him after notice of cancellation or suspension of such permit or license by the Board shall have been given.

(16). It shall be unlawful for any carrier to import into this State and deliver any liquor to any person not authorized to import the same, or to transport and deliver liquor to any person in a dry area in this State, unless the same be for a lawful purpose as provided in this Act.

(17). It shall be unlawful for any person to manufacture, import, sell, or possess for the purpose of sale any alcoholic beverage made from dried grapes, dried fruits, and dried berries or any compounds made from synthetic materials, concentrate of wines, or substandard wines. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 17, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 22.

Section 17 of Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, originally incorporated in this article, was repealed, by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.

A new section designated 17 was added to Acts 1935, by Acts 1937, 45th Leg., p. 1053, ch. 448, § 22.

**Art. 666—17a. Possession of equipment or material for manufacturing illicit beverages; false statement in application for permit or license; perjury**

(1) It shall be unlawful for any person to have in his possession any equipment or material designed for, capable of use for, or used in the manufacturing of any illicit beverage.

(2). Any person who makes any false statement or representation in his application for a permit or license, or in any statement, report, or other instrument to be filed with the Board, which is required to

be sworn to, shall be deemed guilty of perjury and his punishment fixed as prescribed for such offense in Article 308 of the Penal Code, 1925. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 17a, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 23.

Section 17a of Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, originally incorporated in this article, was repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.

A new section designated 17a was added to Acts 1935, by Acts 1937, 45th Leg., p. 1053, ch. 448, § 23.

#### Art. 666—19. Cancellation or suspension of permit on conviction; suit on bond; liability of surety

If a person has been finally convicted in any Court for the violation of any provision of this Act or of any rule and regulation of the Board, the Board or Administrator may cancel or suspend any permit which he may hold or in which he may have an interest and no appeal from such action shall be allowed.

When any person who holds a permit or who has an interest in a permit shall be finally convicted for the violation of any provision of this Act or of any rule and regulation of the Board, or if his permit or a permit in which he has an interest has been cancelled by the Board or Administrator and no appeal is pending, the Board may in its own name institute action upon the bond supporting such permit for the benefit of the State. Upon proof of such conviction or cancellation of the permit, the Court before whom such suit is brought shall render judgment in favor of the Board for all fines, costs, and fifteen (15) per centum of the face value of the bond.

If any permittee shall fail to remit seasonably any money due the State, the surety on his bond shall be liable for all such taxes or money due the State and in addition thereto a penalty of fifteen (15) per centum of the face value of the bond. Suits for the collection of any of the amounts herein specified shall be brought in any Court of competent jurisdiction of Travis County, Texas.

Nothing in this Act shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

The surety may terminate its liability under such bond by giving thirty (30) days' written notice thereof, served either personally or by registered mail, to the principal and to the Board; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty (30) days from the date of service of such notice. Unless on or before the expiration of such period, the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the permit of the principal shall likewise terminate upon the expiration of such period. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 24.

#### Art. 666—20. Searches and seizures

A search warrant may issue under Title 6 of the Code of Criminal Procedure<sup>1</sup> for the purpose of searching for, seizing, and destroying any alcoholic beverage possessed, sold, transported, manufactured, kept, or stored in violation of the provisions of this Act; for the purpose of searching for and seizing any equipment and instrumentality used for, capable of use for, or designed for use in the manufacturing of

any illicit beverage or any vehicle or instrumentality used or to be used for the illegal transportation or storage of any illicit beverage, unlawful equipment, or materials used or to be used in the illegal manufacturing of any illicit beverage and for the purpose of searching for and seizing any forged or counterfeit stamp, die, plate, official signature, certificate, evidence of tax payment, license, or other instrument pertaining to this Act, or any instrumentality, or equipment, or parts thereof used or to be used, designed, or capable of use for the manufacturing, printing, etching, inditing, or any other way bringing into existence any forged or counterfeit stamp, die, plate, certificate, official signature, evidence of tax payment, permit, license, or any other instrument pertaining to this Act.

Search warrants may be issued by any magistrate upon the affidavit of a credible person, setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premise is a place where some specified phase or phases of this Act are violated or are being violated. If the place to be searched is a private dwelling occupied as such and no part thereof is used as a store, shop, hotel, boarding house, or any purpose other than a private residence such affidavit shall be made by two (2) credible persons.

Except as herein provided the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform as near as may be to the provisions of Title 6 of the Code of Criminal Procedure.

All such alcoholic beverages and articles shall be seized by the officer executing the warrant and shall not be taken from the custody of any officer by writ of replevin nor any other process but shall be held by such officer to await final judgment in the proceedings. It is not intended by the provisions of this Section that a search warrant shall be required for any peace officer or any agent, representative, or inspector of the Board to search any premise covered by any permit or license under the provisions of this Act. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 20, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 25.

<sup>1</sup> Articles 304-332.

Section 20 of Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, originally incorporated in this article, was repealed, by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.

A new section designated 20 was added to Acts 1935, by Acts 1937, 45th Leg., p. 1053, ch. 448, § 25.

#### Art. 666—21. Fees and taxes

There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act the following:

(a). A tax of Ninety-six (96) Cents per gallon on each gallon of distilled spirits, provided the minimum tax on any package of distilled spirits shall be Six (6) Cents.

(b). A tax of Ten (10) Cents on each gallon of vinous liquor that does not contain over fourteen (14) per cent of alcohol by volume.

(c). A tax of Twenty (20) Cents on each gallon of vinous liquor containing more than fourteen (14) per cent and not more than twenty-four (24) per cent of alcohol by volume.

(d). A tax of Twenty-five (25) Cents on each gallon of artificially carbonated and natural sparkling vinous liquor.

(e). A tax of Fifty (50) Cents on each gallon of vinous liquor containing alcohol in excess of twenty-four (24) per cent by volume.

(f). A tax of Fifteen (15) Cents on each gallon of malt liquor containing alcohol in excess of four (4) per cent by weight.

The term "first sale" as used in Article I of this Act shall mean and include the first sale, possession, distribution, or use in this State of any and all liquor refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this State.

The tax herein levied shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act; provided however, any holder of a permit as a retail dealer as that term is defined herein shall be held liable for any tax due on any liquor sold on which the tax has not been paid.

It shall be the duty of each person who makes a first sale of any liquor in this State to affix said stamps on each bottle or container of liquor and to cancel the same in accordance with any rules and regulation of the Board. The Board shall have power to relax the foregoing provision when in its judgment it would be impracticable to require the affixing of such stamp on the bottle or container. In the case of wines, the stamp shall be affixed to every container intended to be sold as an unbroken package to the ultimate customer. And no wine shall be sold for consumption on the premises of a person holding a Wine and Beer Retailer's Permit except from a container having the State tax Stamp affixed thereto. And any person, persons or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year. Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, shall prepare and furnish such information and such reports as may be required by rules and regulations of the Board. Any person authorized to export liquor from this State having in his possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of Twenty-five (25) Cents shall be made for every such stamp, except that a charge of Ten (10) Cents shall be made for each such stamp placed on vinous or malt liquors of twenty-four (24) per cent alcoholic content or less. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish to the Board duplicate copies of all invoices for the sale of such liquors within twenty-four (24) hours after such liquors have been removed from their place of business. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 3; Acts 1937, 45th Leg., p. 1053, ch. 448, § 26.

#### Art. 666—21a. Stamps; issuance

Stamps for spirituous liquor shall be issued only in multiples of the rate assessed for each half-pint; stamps for wine shall be issued only

in multiples of the rate assessed for each quart; stamps for malt liquors containing alcohol in excess of four (4) per cent by weight shall be issued in multiples of the rate assessed for each twelve (12) fluid ounces; provided that where any such liquors are contained in containers of one-fifth of a gallon, stamps shall be issued therefor at the assessed rate for each such type of liquor; and provided further, that where any such distilled spirits are contained in containers of one-tenth of a gallon, stamps shall be issued therefor at the assessed rate for each such type of distilled spirits. It is further provided that the taxes herein levied and assessed shall be paid and collected by stamps as provided in this Section. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 27.

**Art. 666—21b. Rules and regulations designating persons permitted to purchase stamps**

The Board shall by rule and regulation designate such permit holders or persons who shall be lawfully entitled to purchase State tax stamps. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 21b, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 28.

**Art. 666—21c. Records of production, receipt of liquor, sales, and stamps used by permittee; false entries**

Each holder of a permit under Article I<sup>1</sup> of this Act who distills, rectifies, manufactures or receives any liquor shall make and keep a record of each day's production or receipt of liquor, the amount of tax stamps purchased by him, and each such permit holder other than a retailer shall make and keep a record of each and every sale of liquor and to whom such sale is made. Entry of each such transaction shall be made on the day it occurs. All such permittees shall make and keep such other records as may be required by rule and regulation of the Board. All records which permittees are required to make shall be kept available for the inspection of the Board or its authorized representatives for a period of at least two years.

It shall be unlawful for any person to fail or refuse to make and keep for a period of at least two years any record required in this section, or to fail or refuse to keep such records open for inspection to the Board or its duly authorized representatives during reasonable office hours.

It shall further be unlawful for any person knowingly with intent to defraud to make or cause to be made any false entry in any records required in this section or with like intent to alter or cause to be altered any item in said records. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 21c, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 29, amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 7.

<sup>1</sup> Article 666—1 et seq.

**Art. 666—22. Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47**

**Art. 666—23. Dry and wet areas; definitions**

Whenever the term "dry area" is used in this Act it shall mean and refer to all counties, justice precincts, incorporated cities or towns wherein the sale of alcoholic beverages had been prohibited by valid local option elections held under the laws of the State in force at the time of the taking effect of Section 20, Article XVI, Constitution of Texas in the year 1919. It likewise shall mean and refer to any such areas where sale of such alcoholic beverages shall be prohibited under the terms of this Act.

The term "wet area" shall mean and refer to all other areas of the State.

As to any particular type of alcoholic beverage, each county, justice precinct, incorporated city or town within this State shall be deemed to be a "dry area" unless such political subdivision was a "wet area" at the time Section 20 of Article XVI of the Constitution became effective and has not since said time changed its status, or unless the sale of that particular type of alcoholic beverage has been legalized by local option election in such political subdivision since said time.

The term "wet area" shall be construed as including in each particular instance only alcoholic beverages of a type or alcoholic beverage not exceeding in alcoholic content that which have been legalized by a valid local option election in the prescribed area.

The trial Courts of this State shall take judicial knowledge of the status of wet and dry areas as herein defined in any criminal prosecution.

An allegation that any county or political subdivision as herein provided is a dry area as to any particular type of alcoholic beverage shall in law be deemed sufficient in any information, complaint, or indictment; provided, however, that a different status of such area may be urged and proved as a defense. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 30.

Art. 666—23a. Transportation from wet area to wet area; importation of liquor for personal use; stamps; hotels authorized to hold package store permits; evidence

(1). It is provided that any person who purchases alcoholic beverages for his own consumption may transport same from a place where the sale thereof is legal to a place where the possession thereof is legal.

(2). Possession of more than one quart of liquor in a dry area shall be prima facie evidence that it is possessed for the purpose of sale. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 9.

(3). It is provided that it shall be lawful for the holders of Carrier's and Private Carrier's Permits to transport liquor from one wet area to another wet area where in the course of such transportation it is necessary or convenient to cross a dry area.

(4). It is provided that any person may bring into this State not more than one quart of liquor for his own personal use; provided further, that he shall pay and affix thereto the required State tax stamps.

(5). It is further provided that any bona fide hotel shall be authorized to hold a Package Store Permit as well as a Wine and Beer Retailer's Permit and a Beer Retailer's License provided such businesses are completely and wholly segregated from each other. The Board is authorized to adopt rules and regulations to enforce this provision. It is further provided that a hotel holding a Package Store Permit may deliver liquor at retail in unbroken packages to the rooms of bona fide guests of such hotel for consumption in such rooms.

(6). Proof of the sale or delivery by any person holding a retailer's permit of more than three (3) gallons of distilled spirits to any person in a single or continuous transaction shall be prima facie evidence that the same is a sale at wholesale.

(7). Proof of the sale or delivery by any person holding a permit authorizing the sale of distilled spirits at wholesale of less than three

(3) gallons of such distilled spirits in any single transaction shall be prima facie evidence that the same is a sale at retail.

(8). Upon a trial for a violation of any provision of either Article I<sup>2</sup> or Article II of this Act,<sup>3</sup> a conviction may be had upon the uncorroborated testimony of an accomplice. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 23a, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 31.

<sup>2</sup> Article 666—1 et seq.

<sup>3</sup> Article 667—1 et seq.

Section 23a of Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, originally incorporated in this article was repealed,

by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.

A new section designated 23a was added to Acts 1935, by Acts 1937, 45th Leg., p. 1053, ch. 448, § 31.

#### Art. 666—25. Sale regulations

It shall be unlawful for any person to sell or deliver any liquor:

- (a). Between 12 o'clock midnight and 7 o'clock A. M. on any day;
- (b). On any general primary or general election day between the hours of 7:00 o'clock A. M. and 8:00 o'clock P. M.;
- (c). On Sundays. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 32.

#### Art. 666—25a. Regulations by Commissioners' Courts and by cities and towns

The Commissioners' Court of any county in the territory thereof outside incorporated cities and towns and the governing authorities of any city or town within the corporate limits of any such city or town may prohibit the sale of alcoholic beverages by any dealer where the place of business of any such dealer is within three hundred (300) feet of any church, public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in direct line across intersections where they occur. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 25a, as added Acts 1937, 45th Leg., p. 1058, ch. 448, § 33, amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 10.

#### Art. 666—26. Sale to minors, exceptions

(a). It shall be unlawful to employ anyone to sell liquor who is under the age of twenty-one (21) years.

(b). It shall further be unlawful for any person to knowingly sell any liquor to any person under twenty-one (21) years of age, or to any person who is intoxicated, or to any habitual drunkard, or to any insane person. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 34.

#### Art. 666—27. Regulation of transportation

(a). It shall be unlawful for any person to transport into this State or upon any public highway, street, or alley in this State any liquor unless the person accompanying or in charge of such shipment shall have present and available for exhibition and inspection, a written statement furnished and signed by the shipper, showing the name and address of the consignor and the consignee, the origin and destination of such shipment, and such other information as may be required by rule and regulation of the Board. It shall be the duty of the person in charge of such shipment while the same is being transported, to exhibit such written statement to the Board or any of its authorized representatives or to any peace officer making demand therefor, and it shall be unlawful for any person to fail or refuse to exhibit the same upon such de-

mand. Such written statement shall be accepted by such representative or officer as prima facie evidence of the lawful right to transport such liquor.

(b). It shall be unlawful for any brewer, distiller, winery, or manufacturer of any alcoholic beverage or manufacturer's agent, or any of the agents, servants, or employees thereof, to enter or offer to enter into any agreement, contract, arrangement, condition, or system, either orally or written, with any wholesaler or any other person in this State wherein or whereby any person is required, obligated, persuaded, influenced, or induced, or by the terms of which it is intended or calculated to require, obligate, persuade, influence, or induce any person to purchase, produce, obtain, require, or secure any certain volume or quota of business, more or less, of any one or more types, kinds, brands, or varieties of alcoholic beverages, whether the same be within any period of time, or within any area, or upon the fulfillment of any condition, attainment, provision, demand, or promise or to require, obligate, persuade, influence, or induce any person or attempt to require, obligate, persuade, influence, or induce any such person to sell any alcoholic beverage in any manner contrary to law or in any manner calculated to induce a violation of the law. The Board or Administrator shall have the power and it shall be their duty to investigate such and if they find or have good reason to believe that the provisions set out in this Subsection have been or are being violated it shall be their duty to give notice of hearing to the affected parties in the manner as provided for other hearings. Upon the finding of facts by the Board or Administrator that any such person has violated or is violating any provisions hereof, an order shall be entered by the Board or Administrator prohibiting any such person or his agents to directly or indirectly ship into this State any of his goods or merchandise for a period not to exceed one year. It shall further be unlawful for any person to import into this State any alcoholic beverage of such person during the period of suspension as ordered by the Board or Administrator. Any alcoholic beverage so unlawfully transported or imported into this State is hereby declared to be an illicit beverage. The Board shall adopt all necessary rules to effectuate the purposes of this Section. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 35.

**Art. 666—28. Forgery or counterfeiting stamps, other instruments, etc.**

(1). Any person who shall forge or counterfeit any stamp as provided by this Act, or who shall print, engrave, make, issue, sell, circulate, or possess with intent to use, sell, circulate, or pass any forged or counterfeit stamp or who shall place or cause to be placed any such forged or counterfeit stamp on any container of alcoholic beverage shall be guilty of a felony.

(2). Any person who shall print, engrave, make, issue, sell, or circulate with intent to defraud or who shall knowingly possess any such forged or counterfeit permit, license, official signature, certificate, evidence of tax payment or other instrument shall be guilty of a felony.

(3). Any person who has in his possession any stamp, die, plate, device, machine, or any other instrument or parts thereof used, or designed for use for forging or counterfeiting any instrument set out in subdivisions (1) and (2) of this Section shall be guilty of a felony.

(4). The term "counterfeit" or "forged" as used in this Section shall apply to any stamp, permit, license, official signature, certificate, evidence of tax payment or any other instrument which has not been printed, manufactured, or made by, or under the direction of, or is-



sued, sold or circulated by, the person or Board authorized to do so by the provisions of this Act.

(5). Upon conviction of any person under any provisions of this Section, his punishment shall be by confinement in the State penitentiary for any term of not less than two (2) years nor more than twenty (20) years.

(6). Conviction for any offense defined in this Section may be had upon the uncorroborated evidence of an accomplice. Any Court, officer, or tribunal having jurisdiction of any offense defined in this Section or any District or County Attorney may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this Section. Any person so summoned and examined shall not be liable to prosecution for the violation of any provision of this Section about which he may testify. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 36.

#### Art. 666—30. Seizure of illicit beverages and illegal equipment; disposition

Any illicit beverage as that term is defined in this Act, and all illegal equipment for manufacturing any alcoholic beverages is hereby declared to be contraband and the same may be seized without warrant by the Board, or any one of its agents or employees or by any peace officer and any person found in the possession, or in charge thereof, may be arrested without warrant. All contraband alcoholic beverages so seized shall be turned over to either the sheriff of the county in which such seizure is made or to any authorized representative or agent of the Board.

The Board shall have the power and authority to assemble seizures of alcoholic beverages and concentrate them at a place in this State where the sale thereof will be deemed most advantageous.

All contraband alcoholic beverages remaining in the hands of the sheriff shall be sold by him at public auction to the highest bidder, after due notice of such sale has been posted for a period of at least ten (10) days, but no sale of liquor shall be made to any person unless he is a permittee who is privileged to have possession thereof. No delivery of liquor so sold shall be made to any permittee unless and until the proper State tax stamps have been purchased and affixed as required by this Act.

It is further provided that immediately after the sale as herein provided, no alcoholic beverage sold at public auction by a sheriff shall be delivered within a period of five (5) days after such sale during which time the Board may in its discretion reject any bids and order the liquor disposed of in any manner herein provided.

It is further provided however that in all such instances where alcoholic beverages are offered for sale at public auction the Board shall have the right and authority to bid thereon. In the event the Board is the highest bidder such alcoholic beverages shall be delivered to the Board after the payment of the expenses of the sale only and shall be sold by the Board as herein provided.

All alcoholic beverages which may come into the possession of the Board under the provisions of this Section may be sold by the Board at either public or private sale.

All illegal equipment shall be destroyed; provided, however, that such equipment which possesses any appreciable value shall be made

incapable of further illegal use and may then be sold by the Board or Administrator at private sale.

All costs and expense incidental to the seizure, sale, and assembling of all contraband illicit beverages and illegal equipment shall be deducted from the proceeds of the sale thereof.

The net proceeds from all sales as provided in this Section shall be placed in a separate fund by the Board and may be used from time to time for defraying such expenses, as may be necessary, for the investigation of and obtaining evidence for violations of the provisions of this Act. All money remaining in said fund on August 31st of each year shall be deposited with the State Treasurer for the benefit of the General Fund. The fund herein created is hereby appropriated and shall be independent of and in addition to any other appropriation which may be made for the use of the Board. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 37.

#### Art. 666—31. Enforcement by peace officers

It shall be the duty of all peace officers of this State, including city, county and State, to enforce all provisions of this Act and to assist the Board in detecting violations of this Act and apprehending offenders, and of county Courts in cases of violation to make recommendations to the Board for revocation of permits and licenses. Whenever any officer or representative of the Board shall arrest any person for violation of any provision of this Act or of any rule and regulations of the Board, he shall take into his possession all illicit beverages which the person so arrested has in his possession or on his premises. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 38.

#### Art. 666—40. Local option elections; submission of issues

The Commissioners' Court upon its own motion may, or upon petition as herein provided shall, as provided in Section 32, Article I,<sup>1</sup> order local option elections for the purpose of determining whether alcoholic beverages of the various types and alcoholic contents herein provided shall be legalized or prohibited.

In areas where any type or classification of alcoholic beverages is prohibited and the issue or issues submitted pertain to legalization of the sale of one or more such prohibited types or classifications, one or more of the following issues shall be submitted:

(a). "For legalizing the sale of beer that does not contain alcohol in excess of four (4%) per centum by weight" and "Against legalizing the sale of beer that does not contain alcohol in excess of four (4%) per centum by weight."

(b). "For legalizing the sale of malt and vinous beverages that do not contain alcohol in excess of fourteen (14%) per centum by volume" and "Against legalizing the sale of malt and vinous beverages that do not contain alcohol in excess of fourteen (14%) per centum by volume."

(c). "For legalizing the sale of all alcoholic beverages" and "Against legalizing the sale of all alcoholic beverages."

In areas where the sale of all alcoholic beverages has been legalized one or more of the following issues shall be submitted in any prohibitory election:

(d). "For prohibiting the sale of all beverages that contain alcohol in excess of four (4%) per centum by weight" and "Against prohibiting the sale of all beverages that contain alcohol in excess of four (4%) per centum by weight."

(e). "For prohibiting the sale of all alcoholic beverages that contain alcohol in excess of fourteen (14%) percentum by volume" and "Against prohibiting the sale of all alcoholic beverages that contain alcohol in excess of fourteen (14%) percentum by volume."

(f). "For prohibiting the sale of all alcoholic beverages" and "Against prohibiting the sale of all alcoholic beverages."

In areas where the sale of beverages containing alcohol not in excess of fourteen (14%) percentum by volume has been legalized, and those of higher alcoholic content are prohibited, one or more of the following issues shall be submitted in any prohibitory election:

(g). "For prohibiting the sale of alcoholic beverages that contain alcohol in excess of four (4%) percentum by weight" and "Against prohibiting the sale of alcoholic beverages that contain alcohol in excess of four (4%) percentum by weight."

(h). "For prohibiting the sale of all alcoholic beverages" and "Against prohibiting the sale of all alcoholic beverages."

In areas where the sale of beer containing alcohol not exceeding four (4%) percentum by weight has been legalized and all other alcoholic beverages are prohibited, the following issue shall be submitted in any prohibitory election:

(i). "For prohibiting the sale of beer containing alcohol not exceeding four (4%) percentum by weight," and "Against prohibiting the sale of beer containing alcohol not exceeding four (4%) percentum by weight."

Where more than one issue is submitted on a single ballot no ballot shall be counted unless the voter shall vote upon each of the issues appearing on any such ballot; and each such ballot shall have printed thereon the words "This ballot will not be counted unless the voter shall vote upon each of the issues appearing hereon." As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 30a; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 8.

<sup>1</sup> Article 666—32.

#### Art. 666—40a. Contest of election

At any time within thirty (30) days after the result of any local option election held pursuant to the provisions of the Texas Liquor Control Act has been declared, any qualified voter of the county, justice precinct or incorporated town or city of such county in which such election has been held, may contest the said election in the District Court of the county in which such election has been held, which shall have original and exclusive jurisdiction of all suits to contest such election, and the proceedings in such contest shall be conducted in the same manner, as now govern the contest of any general election, and said court shall have jurisdiction to try and determine all matters connected with said election, including the petition of such election and all proceedings and orders relating thereto, embracing final count and declaration and publication of the result putting local option into effect, and it shall have authority to determine questions relating to the legality and validity of said election, and to determine whether by the action or want of action on the part of the officers to whom was entrusted the control of such election, such a number of legal voters were denied the privilege of voting, as had they been allowed to vote, might have materially changed the result, and if it shall appear from the evidence that such irregularities existed in bringing about said election or in holding same, as to render the true result of the election impossible to be arrived at, or very doubtful of ascertaining, the court shall adjudge such election to be void, and shall order

the proper officer to order another election to be held, and shall cause a certified copy of such judgment and order of the court to be delivered to such officer upon whom is devolved by law the duty of ordering such election. It is further provided that all such cases shall have precedence in the District Court and appellate courts, and that the result of such contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding; and provided further, that if no contest of said election is filed and prosecuted in the manner and within the time provided above, it shall be conclusively presumed that said election as held and the result thereof declared, are in all respects valid and binding upon all courts; provided also that pending such contest the enforcement of local option law in such territory shall not be suspended, and that all laws and parts of laws in conflict herewith be and the same are hereby repealed.

Any qualified voter of any county, justice precinct, incorporated city or town within this State which has heretofore voted on local option may contest said election under the provisions of this Act, and if no contest is filed within sixty (60) days from the taking effect of this Act, it shall be conclusively presumed that said election as held was valid in all things and binding upon all courts. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. I, § 40a, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 30a.

#### Art. 666—41. Penalty for violations of act

Any person who violates any provision of Article I of this Act for which a specific penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not more than one year. The term "specific penalty" as used in this Section means and refers only to a penalty which might be imposed as a result of a criminal prosecution. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 39.

#### Art. 666—41a. Certified copies of judgment and of information to be furnished Board; certifying results of local option election; report as to status of wet and dry areas

It shall be the duty of the County Clerk of each county to furnish to the Texas Liquor Control Board or representative upon demand a certified copy of the Judgment of Conviction and a certified copy of the information against any permittee or licensee when such permittee or licensee has been convicted for the violation of any provision of this Act. Such certified copies shall be furnished the Board free of charge.

County Clerks are also charged with the duty to certify the results of any local option election to the Texas Liquor Control Board at Austin, Texas, within three (3) days after the Commissioners Court of such county has declared the results thereof.

On August 1st of each year it shall be the duty of each County Clerk to report to the Board at Austin, Texas, the exact status as to wet and dry areas of his county, specifying the status of the county as a whole and of each recognized political subdivision of the county. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 41a, as added, Acts 1937, 45th Leg., p. 1053, ch. 448, § 40.

#### Art. 666—42. Building or places used in violation as common nuisance

Any room, house, building, boat, vehicle, structure, or place where any alcoholic beverage is manufactured, sold, kept, stored, bartered, or

given away in violation of the laws of this State, and all alcoholic beverages, equipment, and property kept and used in maintaining the same is hereby declared to be a common nuisance and may be seized without warrant by any representative of the Board or any peace officer.

Any person who maintains or operates such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than One Thousand Dollars (\$1,000) or be imprisoned in the county jail for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of alcoholic beverages contrary to the provisions of the laws of this State, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation and any such lien may be enforced by action in any Court having jurisdiction. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 41.

Art. 666—43. Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47

Art. 666—44. Seizure of liquor and vehicle for illegal transportation

It is further provided that if any wagon, buggy, automobile, water or air craft, or any other vehicle is used for the transportation of any illicit beverage or any equipment designed to be used for illegal manufacturing of illicit beverages, or any material of any kind which is to be used in the manufacturing of illicit beverages, such vehicle together with all such beverages, equipment, or material shall be seized without warrant by any representative of the Board or any peace officer who shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested and all principals, accomplices, and accessories to such unlawful act, under the provisions of law, in any Court having competent jurisdiction; but said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties in a sum double the appraised value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide judgment of the Court. The Court upon conviction of the person so arrested shall order the alcoholic beverages disposed of as provided in this Act, and unless good cause to the contrary is shown by the owner, shall order the sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the seizure, and the cost of the sale, shall pay all liens, according to priorities, which are established by intervention or otherwise at said hearing or in other proceedings brought for said purpose, as being bona fide and as having been created without the lien or having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor and shall pay the balance of the proceeds to the Board to be allocated as permit fees. All liens against property sold under this Section shall be transferred from the property to the proceeds of its sale. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or if there be no newspaper in such city or county, any newspaper having circulation in the county, once a week for two (2) weeks and by handbills posted in three (3) public places near the place

of seizure, and if no claimant shall appear within ten (10) days after the publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid to the Board to be allocated as permit fees. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 42.

#### Art. 666—45. Printing and sale of stamps

(a). It shall be the duty of the Texas Liquor Control Board and the Board of Control to have engraved or printed all necessary liquor and beer tax stamps as provided in both Articles I<sup>1</sup> and II<sup>2</sup> of this Act. Such stamps shall be of such design and denomination as the Texas Liquor Control Board shall from time to time prescribe and shall show the amount of tax, the payment of which is evidenced thereby, and shall contain the words "Texas State Tax Paid." All contracts for stamps required by this Act shall be let by the Board of Control as provided by law. The Texas Liquor Control Board is authorized to expend all necessary funds from time to time to keep on hand an ample supply of such stamps.

(b). The State Treasurer shall be responsible for the custody and sale of such stamps and for the proceeds of such sales under his official bond. He shall sell same to such qualified persons as may be designated by the Board and to no other person. The Treasurer shall have power to designate any State or National Bank in this State as his agent to deliver and collect for any stamps and to remit the proceeds thereof to him. Invoices for liquor stamps shall be issued by the State Treasurer in triplicate and numbered consecutively. The original of such invoice shall be forwarded to the purchaser or to the person in whose care they may be sent for the benefit of a qualified purchaser, the duplicate to the Texas Liquor Control Board, and the triplicate shall be retained by the State Treasurer. The duplicate copies shall be transmitted daily to the Board in such manner and shall be accompanied by such statements as the Board may require. The State Treasurer shall make and keep a permanent record of all stamps received by him as well as all stamps sold. Such record shall provide a perpetual inventory of all stamps and the disposition thereof and shall at all times be available to the Board or its authorized representatives.

(c). The Board shall by rule and regulation prescribe the manner in which stamps shall be delivered by the State Treasurer to the Board for use and sale by its inspectors in charge of ports of entry.

(d). Refunds for stamps may be made by the Texas Liquor Control Board from the revenue of stamp sales before the same has been allocated. A refund may be made by the Board in all cases where stamped liquor is returned to the distillery or manufacturer upon a certification by an inspector of the Board who inspected the shipment. The Board may also make a refund to any person who was authorized to purchase stamps and who is in possession of unused stamps upon discontinuation of business. In either instance, it must be shown that the claimant for refund purchased the stamps, for which a refund is asked, from the State Treasurer. No other refunds shall be allowed. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 43.

<sup>1</sup> Article 666—1 et seq.

<sup>2</sup> Article 667—1 et seq.

#### Art. 666—46. Disposition of receipts

Receipts from the sale of liquor stamps shall be deposited in the State Treasury as follows: One-fourth to the credit of the Available

School Fund, and three-fourths to the credit of the Texas Old Age Assistance Fund. All revenues derived from the sale of permits provided for under Article I<sup>1</sup> shall be deposited to the credit of the Texas Old Age Assistance Fund. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 3c; Acts 1937, 45th Leg., p. 1053, ch. 448, § 44.

<sup>1</sup> Article 666—1 et seq.

#### Art. 666—47. Revolving fund for salaries and expenses

For the purpose of enabling the Board to perform all its duties, including the payment of salaries and all other necessary expenses, the Board is hereby authorized to set up a revolving fund in the sum of Fifty Thousand Dollars (\$50,000) to be taken out of revenues derived under the provisions of this Act, which said sum is hereby appropriated and shall be independent of and in addition to any appropriation which may be made. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 45.

#### Art. 666—48. Distribution of copies of act

The Board is hereby authorized to have printed in pamphlet form for distribution such number of copies of the Texas Liquor Control Act, as amended hereby,<sup>1</sup> as may be deemed necessary. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 46.

<sup>1</sup> Articles 666—1 et seq. and 667—1 et seq.

#### Art. 666—50. Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47

Prior to its repeal this article was Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 50, as added Acts 1937, 45th Leg., p. 43, ch. 32, § 1. Present provisions relating to searches and search warrants, see article 666—20, ante.

#### Art. 666—51. Saving clause

That the repeal or amendment of any Section or any portion of a Section of the Texas Liquor Control Act by the enactment of this bill shall not affect or impair any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any cause before such repeal or amendment shall take effect; but every such act done, or right vested or accrued, or proceeding, suit, or prosecution had or commenced shall remain in full force and effect to all intents as if such Section, or part thereof, so repealed or amended had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit, or prosecution shall be changed, the same shall be conducted as near as may be in accordance with this Act. No offense committed and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time when any section or part thereof shall be repealed or amended by this Act, shall be discharged or affected by such repeal or amendment; but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if such prior Statute, or part thereof, had not been repealed or amended, except that where the mode of procedure or matters of practice have been changed by this Act, the procedure had after this Act shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with this Act. Acts 1937, 45th Leg., p. 1053, ch. 448, § 48.

## II. MALT LIQUORS

## Art. 667—1. Definitions

Where used in this Article unless expressly stated otherwise:

(a) The term "barrel" means, as a standard of measure, a quantity of beer equal to thirty-one (31) standard gallons.

(b) The term "beer" means a malt beverage containing one-half of one per cent or more of alcohol by volume and not more than four (4) per cent of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer.

(c) The term "board" means Texas Liquor Control Board.

(d) The term "container" means any container holding beer in quantities of one barrel, one-half barrel, one-quarter barrel, one-eighth barrel, or any bottle or can having a capacity of twelve (12) fluid ounces, twenty-four (24) fluid ounces, and thirty-two (32) fluid ounces, and no container of any other capacity shall be authorized.

(e) The term "licensee" means any holder of a license provided in this Article, whether acting as principal, agent, or employee.

(f) The term "manufacturer" means a person engaged in the manufacture or brewing of beer whether located within or without the State of Texas.

(g) The term "original package" means any container holding one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel of beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.

(h) The term "person" shall mean and refer to any natural person or association of natural persons, trustees, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 2, consisted of 23 sections which appeared as articles 667—1 to 667—22, including article 667—21a, of this title. Section 49 of the amendatory Act of 1937,

cited to the text, purports to amend art. 2 of the Act of 1935, cited to the text; "so as to hereafter read as follows," and then enacts 27 sections which are set out as arts. 667—1 to 667—27 of this title.

## Art. 667—2. Where lawful to manufacture or sell beer

The manufacture, sale, distribution, and transportation of beer is hereby authorized within the State of Texas.

Unless otherwise herein specifically provided by the terms of this Act, the manufacture, sale, distribution, transportation, and possession of beer as herein defined shall be governed exclusively by the provisions of this Article. It shall be unlawful to manufacture, sell, barter, or exchange within this State any beverage containing alcohol in excess of one-half of one per cent by volume and not more than four (4) per cent of alcohol by weight except beer.

It shall continue to be unlawful to manufacture, sell, barter, or exchange in any county, justice precinct, or incorporated city or town any beer except in counties, justice precincts, or incorporated cities or towns wherein the voters thereof had not adopted prohibition by local option elections held under the laws of the State of Texas and in force at the time of taking effect of Section 20, Article 16 of the Constitution of Texas in 1919; except that in counties, justice precincts, or incorporated cities or towns wherein a majority of the voters have voted to legalize the sale of beer in accordance with the local option



provisions of Chapter 116, Acts of the Regular Session of the Forty-third Legislature,<sup>1</sup> or in accordance with the local option provisions, sections 32 to 40, inclusive, of Article I, of House Bill No. 77, General Laws of Texas, Second Called Session of the Forty-fourth Legislature, or any amendments thereof,<sup>2</sup> beer as herein defined may be manufactured, distributed, and sold as herein provided.

It is hereby expressly provided that local option elections may be held in any county, justice precinct, or incorporated city or town within this State in accordance with the provisions of Sections 32 to 40, inclusive, of Article I of the Texas Liquor Control Act,<sup>2</sup> for the purpose of determining from time to time whether the sale of beer shall be prohibited or legalized within the prescribed limits; and it shall be unlawful to sell beer in any county, justice precinct, or incorporated city or town wherein the same shall be prohibited by local option election and lawful to sell beer under the provisions of this Act in any county, justice precinct, or incorporated city or town wherein the sale of beer shall be legalized by local option election. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

<sup>1</sup> Article 694a, now repealed.

<sup>2</sup> Articles 666—32 to 666—40.

#### Art. 667—3. License required

It shall be unlawful for any person to manufacture or brew for the purpose of sale or to import into this State, or to distribute, or sell any beer, or to possess any beer for the purpose of sale within this State without having first obtained appropriate license as herein provided, which license shall at all times be displayed in some conspicuous place within the licensed place of business:

(a) A manufacturer's license shall authorize the holder thereof to manufacture or brew beer and to distribute and sell same to others; and shall also authorize the holder to bottle, can, or pack into containers beer for resale to any place in this State to others, regardless of whether such beer is brewed in the State of Texas, or in any other State of the United States, and imported into Texas; provided that no beer shall be imported into this State except in accordance with the provisions of this Act, that is, in barrels or other containers, and shall at no time be shipped into this State in tank cars; provided that the Liquor Board shall have the same functions, powers, and duties to adopt and enforce a standard of quality, purity, and identity of malt beverages and to promulgate all such rules and regulations as shall be deemed necessary to fully safeguard the public health and to insure sanitary conditions in the manufacturing, purifying, bottling, and rebottling of beer under a manufacturer's license as apply to breweries located within the State of Texas. Every person, agent, receiver, trustee, firm, corporation, association, or co-partnership opening, establishing, operating, or maintaining one or more establishments under a manufacturer's license within this State under the same general management or ownership shall pay the license fees hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such establishments. Each establishment bottling beer of the same brand or beer brewed by the same brewery shall be held to be under a common management and control, and shall be subjected to the license fees prescribed herein regardless of the nature of control or ownership of each separate es-

establishment. The annual license fees herein prescribed shall be as follows:

1. Upon one (1) establishment the license fee shall be Five Hundred Dollars (\$500);

2. Upon each additional establishment in excess of one (1), but not to exceed two (2), the license fee shall be Ten Thousand Dollars (\$10,000);

3. Upon each additional establishment in excess of two (2), but not to exceed five (5), the license fee shall be Twenty-five Thousand Dollars (\$25,000);

4. Upon each additional establishment in excess of five (5), the license fee shall be Fifty Thousand Dollars (\$50,000).

The provisions of this Act shall be construed to apply to every person, agent, receiver, trustee, firm, corporation, co-partnership, or association, either domestic or foreign, which is controlled or held with others by majority stock ownership, or ultimately controlled or directed by one management or association of ultimate management.

(b) General Distributor's License: A General Distributor's License shall authorize the holder thereof to distribute or to sell beer to other General Distributors, Local Distributors, Retail Dealers, and others only in the unbroken original packages in which it is received by him from the manufacturer or other General Distributor, and not to be consumed on the premises where sold. Annual State fee for a General Distributor's License shall be Two Hundred Dollars (\$200).

(c) Local Distributor's License: A Local Distributor's License shall authorize the holder thereof to sell and distribute beer to Retail Dealers, ultimate consumers and others in the county of his residence only in the unbroken original packages in which it is received by him not to be consumed on the premises where sold; and such sales may be made to other local distributors licensed to sell beer only in the county of the selling distributor's residence. Annual State fee for a Local Distributor's License shall be Fifty Dollars (\$50).

(d) Retail Dealer's On-Premise License: A Retail Dealer's On-Premise License shall authorize the holder thereof to sell beer, for consumption on or off the premises where sold, in or from any lawful container to the ultimate consumer, but not for resale. Annual State fee for a Retail Dealer On-Premise License shall be Twenty-five Dollars (\$25).

(e) Retail Dealer's Off-Premise License: A Retail Dealer's Off-Premise License shall authorize the holder thereof to sell beer in bottles or other lawful container direct to the consumer, but not for resale, and not to be opened or consumed on the premises where sold. Annual State fee for a Retail Dealer Off-Premise License shall be Ten Dollars (\$10).

(f) Branch License: The holder of a Manufacturer's or General Distributor's License, after obtaining the primary license in the county of his domicile or residence, may establish a place of business in any other county for the distribution of beer upon obtaining a Branch License as herein provided. Any Branch License issued under the provisions of this Section shall terminate at the same time as the primary license of such licensee. The annual State fee for a Branch License shall be Fifty Dollars (\$50); provided, however, that the fee for any license required to terminate in less than twelve (12) months from the date of issue shall be paid in advance at the rate of Four Dollars and Twenty-five Cents (\$4.25) for each month or fraction thereof for which the license is issued.

To obtain a Branch License the applicant therefor shall present the primary license secured in the county of his residence to the Assessor and Collector of Taxes in such other county, together with the fee herein provided, and it shall be the duty forthwith of such Assessor and Collector of Taxes to certify to the Texas Liquor Control Board that such application has been made and the required fees paid, and such other information as the Board may require; and upon receiving such certificate and report from the Assessor and Collector of Taxes it shall be the duty of the Board or Administrator to issue the Branch License accordingly.

(g) The Commissioners Court in each county of this State shall have the power, except as herein otherwise provided as to Temporary Licenses, to levy and collect from every person licensed hereunder in said county a license fee equal to one-half of the State fee; and any incorporated city or town wherein the licensee is domiciled shall have the power to levy and collect a license fee not to exceed one-half of the State fee, but no other fee or tax shall be levied by either. Nothing herein contained shall be construed as preventing the levying, assessing, and collecting of general ad valorem taxes on the property of any person licensed to sell beer.

(h) The holder of a Manufacturer's License or a Distributor's License shall be authorized to maintain or engage necessary warehouses, for storage purposes only in areas where the sale of beer is lawful from which deliveries may be made without such warehouses being licensed, except when such a warehouse is a premise to which importations of beer are made from outside the State. Any warehouse in which sales orders for beer are taken or money therefor collected shall be deemed a separate place of business for which a license is required. The sale and delivery of beer from a truck of a licensed Manufacturer or Distributor to a licensed retail dealer at the latter's place of business shall not constitute such truck to be a separate place of business. The Board shall govern by rule and regulation, the transportation of such beer, the sale of which is to be consummated at the licensed Retailer's place of business. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 11.

(i) There is hereby provided a "Temporary License" authorizing the sale by a Retail Dealer of Beer for consumption on or off the premises where sold. The fee for such Temporary License shall be Five Dollars (\$5). Such licenses shall be issued by the Assessor and Collector of Taxes upon application approved by the County Judge, but no such permit shall be issued to any person who does not also hold a license as provided in Subsection (d) of this Section, and no such permit shall authorize the sale of beer at any point outside the county where same is issued. Any such Temporary License shall expire at the end of the fourth day after the date the same is issued. Fees collected upon the issuance of such Temporary Licenses shall be retained by the county, and no other fees shall be charged for such licenses; and no refund shall be allowed upon the surrender of nonuse of any such license. The County Judge shall issue such licenses only for the sale of beer at picnics, celebrations, or similar events, and may refuse to issue such licenses if in his judgment the issuance of the license would in any manner be detrimental to the public. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

**Art. 667—3a. Importation of beer without Distributor's or Manufacturer's License unlawful**

It shall be unlawful for any person to import into this State any beer unless he holds a Distributor's or Manufacturer's License. Acts

1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 3a, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

**Art. 667—3b. Quantity of beer imported for personal use; importation by railroad for passengers**

It is provided that any person may import tax paid beer into this State for his own personal use but in any one day he shall not import more than one case containing twenty-four (24) bottles having a capacity of not exceeding twelve (12) ounces each, or not exceeding the equivalent thereof if contained in any other kind of container.

It is also provided that any railroad company operating in this State may import beer owned by such railroad company into this State in such quantities as are necessary to meet the demands of the traveling public while traveling on trains operated by such railroad company, provided, however, no beer shall be sold or served in a dry area. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 3-b, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 12.

**Art. 667—4. License fees payable before issuance of license; disposition of proceeds**

Before any license required by this Article shall be issued the license fee required therefor shall be paid to the Assessor and Collector of Taxes of the county where such license is applied for; and such fees, except fees for Temporary Licenses herein provided, shall be for the use and benefit of the Old Age Assistance Fund of the State of Texas. Such funds shall be transmitted by the tenth day of the month following the collection thereof to the Board and by it delivered to the State Treasurer to be placed to the credit of the Old Age Assistance Fund. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

**Art. 667—5. Application for license**

Any person desiring a license as manufacturer, distributor, or retail dealer may in vacation or in termtime file a petition with the County Judge of the County in which the applicant desires to engage in such business which petition shall state as follows:

If a manufacturer:

(1) That he is a law abiding, taxpaying citizen of this State, over twenty-one (21) years of age; that he has been a resident of the county wherein such license is sought for a period of more than one year next preceding the filing of such petition; and that he has not been convicted of a felony within two (2) years immediately preceding the filing of such petition.

(2) If a co-partnership, that all of the individuals have the same qualifications as provided in paragraph (1) above.

(3) If a corporation, that applicant is organized and chartered under, and has complied with, all corporation laws of this State applicable to such corporation, that the principal place of business is in the county where such license is sought, and the president or manager shall make an affidavit that he possesses all of the qualifications provided in paragraph (1) above.

If a distributor, General or Local:

(1) Applicant shall give the same information required of a manufacturer, including the place or places where his business shall be transacted, and the county or counties where his sales are to be made.

If a retail dealer:

- (1) The same information required of a manufacturer.
- (2) The correct address or premises to be used by the applicant for the sale of beer, and whether he desires to sell beer for consumption on or off the premises.
- (3) He shall enumerate the kinds of business in which he is engaged or in which he intends to engage on the licensed premises and other premises under his control of which the licensed premises is a part.
- (4) That applicant has no financial interest in any establishment authorized to sell distilled spirits.
- (5) That no person engaged in the business of selling distilled spirits has any financial interest in the business to be conducted under the license sought by the applicant.
- (6) That he has not had any interest in any license to sell beer which license has been cancelled or revoked within the twelve (12) months next preceding the date of the present application for license.
- (7) That he is not residentially domiciled with any person who has any financial interest in any establishment engaged in the business of selling distilled spirits, or any person in whose name any license has been cancelled or revoked within the twelve (12) months preceding the present license.
- (8) If applicant for Retailer's License is a corporation, application shall show that the president or manager thereof has been a resident of the county wherein the license is sought for more than one year next preceding the date of the application and that no officer of the corporation is disqualified in any other manner that would prevent him from holding such license in his own name. As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 2; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

Section 2 of Acts 1936, 44th Leg., 3rd C. S. p. 2040, ch. 495, art. 3, amended section 5 of article 2 of the Act of 1935, but

was not referred to in the amendment of article 2 of the Act of 1935 by the Act of 1937, cited to the text.

#### Art. 667—6. Hearing upon application

The application of any person desiring to be licensed to manufacture, distribute, or sell beer shall be filed in duplicate with the County Judge, who shall set same for a hearing at a date not less than five (5) nor more than ten (10) days from the filing of same.

Upon the filing of any application for a license, the County Clerk shall give notice thereof by posting at the courthouse door a written notice of the filing of such petition, and the substance thereof, and the date of hearing upon such petition. Any citizen shall be permitted to contest the facts stated in said petition and the applicant's right to secure license upon giving security for all costs which may be incurred in such contest should this case be decided in favor of the applicant; provided, however, no officer of a county or any incorporated city or town shall be required to give bond for such costs.

If upon hearing upon the petition of any applicant for a license, the County Judge finds the facts stated therein to be true and has no other lawful reason for denying the application, he shall enter an order so certifying, and a copy of said order shall be delivered to the applicant; applicant shall thereupon present the same to the Assessor and Collector of Taxes of the county wherein the application is made and shall pay to the Assessor and Collector of Taxes the fee specified in this Article for the class of license applied for; the Assessor and Col-

lector of taxes shall thereupon report to the Texas Liquor Control Board upon a form prescribed by said Board certifying that the application for license has been approved and all required fees paid, and such other information as may be required by the Board, and to such certificate shall be attached a copy of the original application for license. Upon receiving such report or certification from the Assessor and Collector of Taxes, it shall be the duty of the Board or Administrator to issue the license accordingly, if it is found that the applicant is entitled to a license and there are no legal reasons why a license should not be issued, which license shall show the class of business the applicant is authorized to conduct, amount of fees paid, date, correct address of the place of business, and date of expiration, and such other information as the Board shall deem proper; provided, however, that the Board or Administrator may refuse to issue any such license if in possession of information from which it is determined that any statement contained in the application therefor is false, untrue, or misleading. Upon any such refusal by the Board or Administrator, applicant shall be entitled to refund of any license fee paid to the County Assessor and Collector of Taxes at the time of filing his application.

If upon hearing upon the petition of any applicant for a license the County Judge finds any facts stated therein to be untrue, the application shall be denied; and it shall be sufficient cause for the County Judge to refuse to grant any license when he has reason to believe that the applicant will conduct his business of selling beer at retail in a manner contrary to law or in any place or manner conducive to violation of the law, or likely to result in any jeopardy to the peace, morals, health, or safety of the general public. In the granting or withholding of any license to sell beer at retail, the County Judge in forming his conclusions shall give due and proper consideration to any recommendations made by the District or County Attorney or the Sheriff of the county, and the Mayor and Chief of Police of any incorporated city or town wherein the applicant proposes to conduct his business and to any recommendations made by representatives of the Board.

In the event the County Judge, Texas Liquor Control Board or Administrator denies the application for a license, he shall enter his judgment accordingly, and the applicant may within thirty (30) days thereafter appeal to the District Court of the county where such application is made, and such District Court may hear and determine such appeal in termtime or vacation in a trial de novo. It shall be incumbent upon the applicant to make the same showing in all matters to the District Judge that he is required by this Article to make to the County Judge, and the District Judge in hearing upon the appeal shall hear the cause and render judgment in like manner as required of the County Judge. Judgment of the District Court shall be final, and if the application shall be granted by final judgment, a certified copy of the judgment shall be presented to the Assessor and Collector of Taxes who shall thereupon accept the fees required and make report to the Board in the manner required upon like orders issued by the County Judge. Any person appealing from the judgment of the County Judge shall give bond for all costs incident to such appeal and shall be required to pay such costs if the judgment on appeal is unfavorable to the applicant but not otherwise.

Every person making application for an original license of any class herein provided, except Branch Licenses and Temporary Licenses, shall be subject at the time of the hearing thereon to a fee of Five Dollars (\$5), which fee shall, by the County Clerk, be deposited in the County

Treasury, and the applicant shall be liable for no other fees except said application fee and the annual license fee required of him by this Act.

No person shall be authorized to sell beer during the pendency of his original application for a license, and no official shall advise or suggest that such action would be lawful or permitted. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

Art. 667—7. Expiration and renewal of licenses

(a) Any license issued under the terms of this Article, except Branch Licenses and Temporary Licenses specifically provided for, shall terminate one year from the date issued, and no license shall be issued for a longer term than one year. Any person now holding a license to manufacture or sell beer in this State and desiring to renew the same shall before expiration of his present license, and not more than thirty (30) days prior to such expiration date, be required to make application in the manner herein provided for the primary issuance of any class of license; and when it is desired to renew any license obtained under the procedure provided in this Article, the holder of such license shall make written application to the Assessor and Collector of Taxes of the county of the Licensee's residence not more than thirty (30) days prior to the date of expiration of the license held by him. Such application for renewal shall be signed by the applicant and contain full and complete information as set out and required in any application for original license, and applicant shall pay to the Assessor and Collector of Taxes the appropriate license fee for the class of license sought to be renewed. The Assessor and Collector of Taxes shall thereupon transmit to the Board a copy of said application for renewal together with the certification that all required fees have been paid for the ensuing license period; and upon receiving the copy of said application and certification as to the payment of fees, the Board or Administrator may in its discretion issue the license applied for, or may within five (5) days after receipt of such application reject the same and require that the applicant for renewal file application with the County Judge and submit to hearing before such County Judge in the manner required of any applicant for the primary or original license. Any applicant for renewal when such renewal is rejected by the Board or Administrator shall be entitled to refund of any license fee paid to the County Assessor and Collector of Taxes at the time of filing his application for renewal.

(b) Any application for renewal shall be accompanied by a fee of Two Dollars (\$2), which sum shall be in addition to the amount required by law to be paid for annual license fees, as a renewal fee charge. Any renewal fee charges collected by the County Assessor and Collector of Taxes shall be deposited in the County Treasury as fees of office and be so accounted for by him. No applicant for renewal of license shall be required to pay any fees other than the renewal fee charge and license fees herein provided, except when required by action of the Board or Administrator to submit to hearing upon such renewal before the County Judge.

(c) A separate license fee shall be required for every place of business where the business of manufacturing, importing, or selling beer is conducted.

(d) No license issued under the provisions of this Article shall be assignable by the holder thereof to any other person; provided, that should any holder of a license desire to change the place of business designated in such license, he may do so by applying to the County Judge and receiving his consent or approval as in the case of original applica-

tion for license as herein provided and without being required to pay additional license fees for the remaining unexpired term of the license held by him. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 13.

(e). No licensee shall obtain any refund upon the surrender or non-use of any license for the manufacture, distribution, importation, or sale of beer except as provided in Section 18<sup>1</sup> of this Article. As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 14.

<sup>1</sup> Article 667—18.

(f). No person shall conduct as owner or part owner thereof any place of business engaged in the manufacture, distribution, importation, or sale of beer except under the name to which the license covering such place of business is issued.

(g). Every license issued prior to the effective date hereof authorizing the manufacture, distribution, or sale of beer shall remain in force until the date of its expiration, but the licensee thereunder shall hold such license as fully subject to all the provisions of this Act, including, but not limited to, the cancellation or suspension thereof for cause, as any license that may be issued on or after the effective date hereof.

(h). Should the license of any licensee become mutilated or destroyed the Board or Administrator may issue another license by way of replacement in any manner deemed appropriate by the Board or Administrator. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

<sup>1</sup> Article 667—19.

#### Art. 667—8. Containers

It shall be unlawful for any person to sell, store, possess, or transport in this State, any beer unless it be in a container as defined in Section 1 of this Article,<sup>1</sup> and every such container shall bear a brand, imprint, or label showing the full name and address of the brewer or manufacturer of such beer, or the name and address of any distributor for whom a special brand is manufactured; and in the event such beer is sold or transported in containers packed in any box, crate, carton, or similar device, the same information shall appear upon the outside of such package. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

<sup>1</sup> Article 667—1.

#### Art. 667—9. Records

Every holder of a Manufacturer's or Distributor's license shall make and keep a record of each day's production or receipt of beer, the amount of stamps purchased by him, and the amount of stamps used by him; and every holder of a Manufacturer's or Distributor's License shall make and keep a record of each and every sale of beer and to whom such sale is made, and entry of every transaction shall be made on the day it occurs; and all such licensees shall make and keep such other records as may be required to be made by the Board or Administrator. All records which licensees are required to make shall be kept available for the inspection of the Board or its authorized representatives for a period of at least two years. It shall be unlawful for any person to fail to make records as required herein or fail to keep for a period of at least two years such records open for inspection to the Board or its duly authorized representatives during reasonable office hours, or to make any false entry or fail to make any entry as herein provided. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 15.



**Art. 667—10. Prohibited hours**

(a) It shall be unlawful for any person to sell beer or offer same for sale between the hours of 12:00 o'clock midnight and 7:00 a. m. of any day or from and after 12:00 o'clock midnight Saturday until 7:00 a. m. Monday of the following week; provided, however, that any holder of a Retail Dealer's License or a Wine and Beer Retailer's Permit shall, upon showing to the satisfaction of the County Judge that he is engaged also in the sale of food and other commodities for human consumption, and that the sale of beverages for which a license is required does not during such prohibited hours normally in the course of any one week's time amount in dollars and cents to more than the sale value of food and other commodities for human consumption sold by such licensee during such hours, be entitled without being required to pay any fee therefor, to a supplementary license authorizing him to sell such beverages during any hour of any day. Said supplementary license shall be on a form furnished by the Board or Administrator and upon being issued shall be attached to and become a part of basic license of the holder, and such supplementary license shall expire with the license of which it is a part; provided further, that the Board or its representatives may at any time make inquiry into the business of such holder; and unless it can be shown by the licensee that his sales of alcoholic beverages are not exceeding in value the sales of food and other commodities for human consumption during the hours referred to in this provision, the Board or Administrator is authorized after notice and hearing to issue an order revoking such supplementary license, and the holder of a license so revoked shall not be entitled to a supplementary license for six (6) months thereafter.

It is provided that during the period of thirty (30) days after the effective date of this Act as to all persons authorized to sell beer at retail, and during a period of thirty (30) days after the issuance thereof as to any new license or permit authorizing such sale (but not as to any renewal) it shall be presumed that the principal business of the licensee or permittee is not the sale of alcoholic beverages; and during such period of time as against any particular licensee or permittee the restrictions of this Section and Section 2 of this Article<sup>1</sup> shall not apply.

(b) It shall be unlawful for any person to make any sale of beer anywhere in this State on the day of any general primary election or general election held in this State between the hours of 7:00 a. m. and 8:00 p. m. of the day; provided, however, that the holder of a Manufacturer's License or a Distributor's License may make deliveries at wholesale during such hours to the bona fide holders of licenses or permits to sell beer, but shall not make any sales or deliveries to any other person. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

<sup>1</sup> Article 667—2.

**Art. 667—10 1/2. Regulation by cities and towns**

In any incorporated city or town where the sale of beer as defined in the Texas Liquor Control Act is prohibited by charter or amendments thereto or by any ordinance from being sold in the residential section, such charter amendments or ordinances shall remain valid and continue effective until such time as such charter provisions, amendments or ordinances may be repealed or amended.

All incorporated cities and towns are hereby authorized to regulate the sale of beer within the corporate limits of such cities and towns by charter amendment or ordinance and may thereby prescribe the opening and closing hours for such sales; such cities and towns may also desig-

nate certain zones in the residential section or sections of said cities and towns where such regulations for opening and closing hours for the sale of beer shall be observed or where such sales may be prohibited. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 10½, as added Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 16.

#### Art. 667—11. Reports of assessor and collector of taxes

The Assessor and Collector of Taxes shall make statements to the Board of the amounts collected by him at the times and in the manner required by the Board or Administrator. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

#### Art. 667—12. Agent to accept service

Any manufacturer, distributor, or person shipping or delivering beer into this State shall file with the Secretary of State a certificate certifying the name of his agent upon whom service may be had, and his or its street address and business; and in the event such person fails to comply with this requirement within fifteen (15) days from the effective date hereof the service may be had on the Secretary of State in any cause of action arising out of the violation of this Act, and it shall be the duty of the Secretary of State to send any such citation served on him to such person, who may be in a foreign State, by registered mail, return receipt requested, and such receipt shall be prima facie evidence of service on such person. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

#### Art. 667—13. Prohibited contributions

It shall be unlawful for any person engaged in or having an interest in any business which manufactures, sells, or distributes beer as defined in this Article<sup>1</sup> to contribute any money or other thing of value toward the campaign expenses of any candidate for office. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

<sup>1</sup> Article 667—1 et seq.

#### Art. 667—14. Word "saloon" prohibited

It shall be unlawful for any person to use the word "saloon" in any manner printed, painted, or placed upon the door, window, or any other public place on or about his premises or in any advertisement. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

#### Art. 667—15. Restrictions on consumption

(a) It shall be unlawful for any licensee to permit any beer to be consumed on the premises where sold unless he is the holder of a license authorizing the sale of beer for consumption on said premises, and it shall be unlawful for any licensee or the agent, servant or employee of any licensee to possess on the premises covered by a license of such licensee any alcoholic beverage that is not authorized by law to be sold for consumption on such premises.

(b) It is hereby provided that hotels authorized by law and holding permit to sell distilled spirits in unbroken packages shall not thereby be disqualified from obtaining a license to sell beer for consumption on the premises where sold. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

**Art. 667—16. Sale of stock after license cancelled**

In the event the license of any licensee hereunder is cancelled or forfeited under the provisions of this Act, the licensee shall nevertheless be authorized to, within thirty (30) days thereafter, sell or dispose of in bulk any stock of beer he may have on hand at the time of such cancellation or forfeiture of license. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

**Art. 667—17. Blinds and barriers**

It shall be unlawful for any person to install or maintain any barrier or blind in the openings or doors of any retail establishment whose principal business is the sale of beer, nor shall any windows on said establishment be painted in such a way as to obstruct the view from the general public at or above a height of fifty-four (54) inches above the ground or sidewalk outside and beneath such window. The sale of beer shall be deemed to be the principal business of any licensee unless he is the holder of a Supplementary License as provided in Section 10 of this Article.<sup>1</sup> As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

<sup>1</sup> Penal Code, Art. 667—10.

**Art. 667—18. Refunding fee for unexpired term**

In all cases where any person pursuing the occupation of selling beer, as herein defined, under licenses issued in accordance with the laws of this State, has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled, by reason of the adoption of local option in any county or subdivision thereof, the proportionate amount of license fees paid by him covering the unexpired term shall be refunded to him. So much of the proceeds so derived under the provisions of this Article as may be necessary, not to exceed two (2) per cent thereof, are hereby appropriated for that purpose. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

**Art. 667—19. Cancellation of license**

The Board or Administrator shall have the power and authority to cancel the license of any person authorized to sell beer after notice and hearing as herein provided upon finding that the licensee has:

1. If a Retailer:
  - (a) Knowingly sold beer to any person under the age of twenty-one (21) years; or
  - (b) Sold beer to any person showing evidence of intoxication; or
  - (c) Sold beer during any hours when such sale was forbidden by law;
- or
- (d) Possessed or permitted to be possessed by his agents or servants (except as to hotels authorized to sell distilled spirits) on premises covered by his license or on premises adjacent thereto and directly or indirectly under his control any alcoholic beverage that he is not authorized by law to sell at the place of business covered by the license sought to be cancelled by the Board or Administrator; or
- (e) Permitted at his place of business any conduct by any person whatsoever that is lewd, immoral, or offensive to public decency; or
- (f) Employed any person under the age of eighteen (18) years to sell, handle, or dispense or to assist in selling, handling, or dispensing

beer in any establishment where beer is sold at retail to be consumed on the premises where sold; or

(g) Made any false or untrue statements in his application for license; or

(h) Conspired with any person to violate any of the provisions of Section 24 of this Article or accepted the benefits of any act prohibited by such section; or

(i) Refused to permit or interfere with an inspection of the licensed premises by any authorized representative of the Board; or

(j) Contributed money or other thing of value toward the campaign expenses of any candidate for office; or

(k) Permitted his license to be used in the operation of a business conducted for the benefit of any person not authorized by law to have an interest in said license; or

(l) Maintained blinds or barriers at his place of business in violation of the law; or that

(m) Such licensee (or, if a corporation, any officer thereof) is financially interested in any place of business engaged in the selling of distilled spirits or has permitted any other person who has a financial interest in any place of business engaged in the sale of distilled spirits to be interested financially in the business authorized by the license sought to be cancelled; or

(n) That the holder of the license sought to be canceled (or, if a corporation, any officer thereof) is residentially domiciled with or so related to any person engaged in the sale of distilled spirits that there is a community of interest which the Board or Administrator may deem inimicable to the purposes of this Act, or is so related to any person in whose name any license has been cancelled or revoked within the twelve (12) months next preceding any date fixed by the Board or Administrator for hearing upon a motion to cancel or revoke the existing license; or

(o) That the licensee has violated any provision of this Act<sup>1</sup> or any rule or regulation of the Board at any time during the existence of the license sought to be cancelled or within the next preceding license period of any license held by the licensee;

(p) In addition to the causes for cancellation hereinbefore set out, the Board or Administrator shall cancel the license of any retailer upon satisfactory proof that the licensee has been finally convicted for the violation of any penal provisions of this Article.

Provided, however, that no license authorizing the retail sale of beer in a hotel shall be cancelled for the causes specified in the foregoing paragraphs (m) and (n) in those cases where there is a place of business authorized to sell distilled spirits in unbroken packages on premises of the hotel other than that part of such premises covered by the retail Beer Dealer's License.

## 2. If a Distributor:

(a) Violated any of the provisions of Section 24<sup>2</sup> of this Article; or

(b) Imported into this State any beer without first having obtained a Distributor's License; or

(c) Failed to comply with all lawful requirements of the Board as to keeping of records and making of reports; or

(d) Failed to pay any taxes due to the State as provided in this Article on any beer sold, stored, or transported by the licensee; or

(e) Refused to permit or interfere with an inspection of his licensed premises or books and records by any authorized representative of the Board; or

(f) Consummated any sales of beer outside the county or counties in which his license authorizes him to sell; or

(g) That the licensee has violated any provisions of this Act or any rule or regulation of the Board at any time during the existence of the license sought to be cancelled or within the preceding license period of any license held by the licensee.

3. If a Manufacturer:

The Board or Administrator shall have the power and authority to suspend after notice and hearing the license of any manufacturer to sell beer in this State, when such licensee does business in violation of the provisions of this Act or rules and regulations of the Board, until said licensee obeys all lawful orders of the Board or Administrator requiring such licensee to cease and desist from such violations.

Any act of omission or commission enumerated herein as cause for the cancellation or suspension of any type of license shall also be a violation of this Act and subject to the penalties provided in Section 26<sup>3</sup> of this Article, provided, however, that the penalty for the making of any false or untrue statements in any application for licenses or in any statement, report or other instrument to be filed with the Board and which is required to be sworn to shall be as is provided in Section 17 (a)-(2)<sup>4</sup> of Article I of this Act. As amended Acts 1937, 45th Leg., p. 1053; ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 17.

<sup>1</sup> Articles 666—1 et seq., 667—1 et seq.

<sup>2</sup> Article 667—24.

<sup>3</sup> Article 667—26.

<sup>4</sup> Article 666—17.

#### Art. 667—20. Hearings

The Board or Administrator shall have the power and authority upon its own motion, and it is hereby made its duty upon petition of any County Judge, County Attorney, or Sheriff of a county, or the Mayor or Chief of Police of any incorporated city or town wherein may be located the place of business of the licensee complained of in such petition to fix a date for hearing, and give notice thereof to any licensee complained of for the purpose of determining whether or not the license of such licensee is to be cancelled by the Board and notify such licensee that he may appear to show cause why such license should not be cancelled or revoked. The Board or Administrator is authorized and empowered to cancel the license of any licensee upon determining after hearing that the holder thereof has given cause for such cancellation in any manner enumerated in Section 19<sup>1</sup> of this Article. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 18.

<sup>1</sup> Article 667—19.

#### Art. 667—21. Suspension of license

The Board or Administrator shall have the power and authority to suspend for a length of time not exceeding thirty (30) days the license of any retail beer dealer upon ascertaining that any act constituting a breach of the peace has occurred upon the premises covered by the license of such retail dealer or under his control, and at the expiration of the date to which such license has been suspended the Board or Administrator shall cancel the license unless it shall have been shown to the satisfaction of the Board or Administrator that the act was beyond the control of the person holding the license and did not result from improper supervision by the licensee of the conduct of persons permitted by him to be on the licensed premises or premises under his control. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

**Art. 667—22. Appeal; suit to restrain suspension; evidence; effect of cancellation or suspension**

Any order of the Board or Administrator cancelling a license shall have the effect that it shall immediately be unlawful, after notice thereof is given, for the holder of such cancelled license to sell beer for a period of one year thereafter, except during the period that the order of cancellation is superseded pending trial, or unless he shall prevail in any final judgment, rendered upon appeal as herein provided. Appeals from decisions or orders of the Board or Administrator cancelling or refusing a license may be had under the same conditions and provisions prescribed in Section 14<sup>1</sup> of Article I of this Act.

No appeal shall lie from an order of suspension of license. No suit of any nature shall be maintained in any Court in this State seeking to restrain the Board or Administrator or any other officer from enforcing any order of suspension issued by the Board or Administrator; and if at any hearing thereon it be shown to the satisfaction of the Board or Administrator that any alcoholic beverage was sold on or from the premises covered by a license during the period of suspension, then such proof shall be sufficient to warrant cancellation of the license.

The cancellation or suspension of any license shall not excuse nor relieve the violator from the penalties provided in this Article. As amended Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 19.

<sup>1</sup> Article 666—14.

**Art. 667—23. Beer tax; stamps**

(a) There is hereby levied and assessed a tax at the rate of One Dollar and Twenty-four Cents (\$1.24) per barrel on all beer sold, stored, distributed, transported, or held for the purpose of sale in this State whether manufactured in or imported into this State. Said tax shall be paid and evidenced by placing stamps, which the State Treasurer is herein authorized to provide in the denominations required, on each original package as defined in this Article; provided, further, that at the time said stamp is affixed the person affixing the stamp shall with indelible ink or stamp cancel the same by placing the date and the licensee's full name or initials upon said revenue stamp.

(b) It is the purpose and intent of this Act to require the tax to be paid and the stamp evidencing same to be affixed on the first sale, distribution, storage, or transportation and at the source, to the end that it will preclude any person evading the payment of this tax. Any person in possession of beer that has not been stamped in accordance with the provisions hereof shall be held to be in violation of this Article and liable for the taxes herein provided and the penalties for such violation.

(c) On beer imported into this State the duty of payment of the tax and affixing and cancelling the stamp as required herein shall rest primarily upon the importer, and it is hereby declared to be unlawful to import beer into this State unless and until said tax has first been paid and the stamp evidencing such payment has been first affixed and cancelled as required by this Act. It is provided, however, that a holder of a manufacturer's license who imports beer into this State for re-bottling purposes shall not be required to affix the State tax stamps to the container in which he receives the same, and that the same may be transported, delivered and stored by him without the State tax stamps being affixed to the containers thereof, but in all instances where beer

is imported into this State for rebottling purposes the importer thereof shall be required by rule and regulation of the Board to make and keep such records and submit such reports as may be required, to the end that it will preclude any person from evading the payment of the proper tax.

(d) On beer manufactured in this State the duty of paying the tax and affixing and cancelling the stamp as required herein shall rest primarily upon the manufacturer, and it is hereby declared to be unlawful for any manufacturer to transport any beer or to deliver to any person any beer to be transported away from the brewery of said manufacturer unless and until tax has first been paid and the tax stamp evidencing such payment has been first affixed and cancelled as required by this Act; provided, however, that no person holding a Manufacturer's License in this State shall be required to affix stamps on any containers of beer stored in the brewery where same is brewed or being transported therefrom to a point outside of this State.

(e) Tax stamp of proper denominations shall be placed on each original package as herein defined upon which the stamp is required to be affixed, in such a way that the original package cannot be conveniently and practically opened without mutilating or defacing said stamp; provided, however, that as to packages where this requirement is in the judgment of the Board impractical the Board shall have authority by regulation to require the affixing of the stamp in any manner it may deem necessary for the protection of the revenue due to the State.

(f) It shall be unlawful to transport to destinations in this State any beer upon which tax has not been paid and such payment evidenced by stamps affixed and cancelled as required by law.

(g) If any person has paid the tax on any beer and affixed tax stamps to the containers thereof and thereafter said beer is shipped out of Texas for consumption, a claim for refund may be made upon paying a fee of Five Dollars (\$5) to the Board at the time and in the manner prescribed by the Board or Administrator. So much of any funds derived hereunder as may be necessary, not to exceed two (2) per cent thereof, is hereby appropriated for such purpose. The Board may promulgate rules and regulations generally for the enforcement of this provision.

(h) No bottled beer shall be stored in this State except it be in a container or original package bearing the proper tax stamp, unless the same is exposed for sale by a retailer or is being cooled for sale by a retailer, except when the same is legally in the possession of the ultimate consumer.

(i) Except as may be otherwise provided by rule and regulation of the Board no person shall be authorized to purchase any beer tax stamps herein provided unless he is the holder of a Manufacturer's or Distributor's License; provided however, that the holder of a Manufacturer's or Distributor's License may designate as his agent for the purchase of stamps any manufacturer or wholesaler located outside the State whose products are imported into this State by the holder of such license; and the State Treasurer shall make no sale of beer tax stamps to any person not authorized to purchase same.

(j) The Board shall from time to time inspect the records of manufacturers, importers, or distributors to ascertain whether there has occurred any evasion of the tax imposed by this Article upon beer sold, stored, distributed, transported, or held for the purpose of sale in this State. It is hereby declared to be the law that as to all beer sold, stored, distributed, transported or held for the purpose of sale in this State and for which the tax has not been paid and evidenced as required by law

prior to the first such act, the tax hereby imposed shall be double the amount of tax required to be paid upon beer that is stamped before its first sale, storage, distribution, or transportation in this State; and any person who shall sell, store, distribute, transport, or hold for purpose of sale any unstamped beer shall be in violation of the law and may be held liable for the tax that may be found to be due to the State. Any receipts or sales or record of receipt or sales of beer by any person in quantity exceeding the amount of beer for which tax stamps have been purchased by such person from the Board shall be prima facie evidence of the sale of beer without payment of the tax thereon.

(k) It shall be unlawful for any person to open any container of beer having a stamp thereon without then and there mutilating or otherwise defacing such stamp so that it cannot be again used; and

(l) It shall be a violation of law for any person to attach to any container of beer or to possess any stamp that has been theretofore attached to a different container, or to use for the packing of beer or to possess for such purpose any container bearing a stamp that has theretofore been used for the delivery of beer unless the stamp required by law to cover the previous sale or delivery has thereafter been defaced, mutilated, or removed.

(m) Any payment of taxes upon beer found to have been sold, stored, or transported before payment thereof, voluntarily or as a result of seizure and sale shall not excuse any person from penalties provided for failure to pay taxes and evidence such payment by the application of stamps as required in this Article. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 23, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

#### Art. 667—24. Marketing practices

(1) It shall be unlawful for any manufacturer or distributor directly or indirectly or through a subsidiary or affiliate, any agent or any employee, or by any officer, director, or firm member:

(a) Ownership of Interest or Real Estate: To own any interest in the business of any retail dealer in beer, or any interest of any kind in the premises in which any such retail dealer conducts his or its business.

(b) Retail licenses: To hold the ownership or any interest in any license to sell brewery products for consumption on the premises covered by such license, except the license of manufacturers to dispense their own products on the brewery premises.

(c) Loans and Guaranties: To furnish, give or lend any money or other thing of value, except signs, or to extend unusual credit terms, to any person engaged in selling brewery products for consumption on or off the premises where sold, or to any person for the use, benefit, or relief of said person engaged in selling as above or to guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged in selling beer at retail. The extension of credit for longer period of time than is generally extended to regular customers of a manufacturer or distributor covering the purchase of brewery products from such manufacturer or distributor shall be deemed unusual credit terms.

(d) Consignment Sales: To make any delivery of beer under any agreement, arrangement, condition, or system whereby the person receiving the same has the right at any time to relinquish possession to or return same to the shipper, or whereby the title to such beer remains in the shipper; or to make any delivery of beer under any agreement,



arrangement, condition, or system whereby the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver, including any delivery of beer to a factor or broker; or to employ any other method whereby any person is placed in actual or constructive possession of beer without acquiring title thereto, or whereby any person designated by the shipper or seller as the purchaser did not in fact purchase the same, or to make any other kind of transaction which in law may be construed as a consignment sale.

(e) Equipment and Fixtures: To furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to any person engaged in selling brewery products for consumption on the premises where sold. This Subsection does not apply to such equipment, fixtures, or supplies furnished, given, loaned, rented, or sold prior to November 16, 1935, except that such transactions made prior to this date are not to be used as a consideration for an agreement thereafter made respecting the purchase of brewery products; provided that equipment, fixtures, or supplies furnished, given, rented loaned, or sold to any person engaged in selling brewery products for consumption on the premises where sold, prior to November 16, 1935, when removed from the premises of such person or repossessed by any manufacturer or distributor of brewery products or by his agents or employees, shall not again be furnished, given, rented, loaned, or sold to any person engaged in the sale of brewery products for consumption on the premises where sold.

(f) Allowances and Rebates for Advertising and Distribution Service: To pay or to make any allowance to any buyer for a special advertising or distribution service, (1) unless in pursuance of a written contract defining the service to be rendered and the payment therefor; and (2) unless such service is rendered and the payment is reasonable and not excessive in amount; and (3) unless such contract is separate and distinct from any sales contract; and (4) unless such payment is equally available for the same service to all competitive buyers in the same class in the same trade area; or (5) where the result of any allowance, rebate, or payment results in the retailer giving to any manufacturer or distributor any advantage as to the sale of beer distributed by such manufacturer or distributor.

(g) Prizes and Premiums: To offer any prize, premium, gift, or other similar inducement, except advertising novelties of nominal value, to any dealer in or consumer of brewery products.

(h) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of any brewery product, if such advertisement causes, or is reasonably calculated to cause, deception of the consumer with respect to the product advertised. An advertisement shall be deemed misleading if it is untrue in any particular or if directly or by ambiguity, omission, or inference, it tends to create a misleading impression. Any advertisement of or reference to alcoholic content of any brewery product or any advertisement disparaging of a competitor's products, or that is obscene or indecent, shall be unlawful.

(i) Misbranding: To sell or otherwise introduce into commerce any brewery product that is misbranded. A product is misbranded:

(1) Food and Drug Act Requirement—If it is misbranded within the meaning of the Food and Drug Act.

(2) Standards of Fill—If the container is so made, formed, or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill.

(3) Standards of Quality—If it misrepresents the standard of quality of products in the branded container.

(4) Labels—If it is so labeled that it purports to be any product other than is actually in the container.

(j) Exclusive Outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of brewery products shall purchase any such products from such persons to the exclusion in whole or in part, of the products sold or offered for sale by any other person engaged in the manufacture or distribution of brewery products, or to require the retailer to take or dispose of a certain quota of any such product.

(k) Commercial Bribery: To give or permit to be given money or anything of value in an effort to induce agents, employers, or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase brewery products from the maker of such gift, or to influence such employers or principals to refrain from dealing or contracting with competitors.

(l) Returnable Container: It shall be unlawful for any manufacturer to accept as a return or to purchase or use any barrel, half-barrel, keg, case, or bottle permanently branded or imprinted with the name of another manufacturer.

(m) Labeling: To manufacture or sell or otherwise introduce into commerce in this State any brewery product unless it bear a label showing in plain, legible type the name and address of the manufacturer and the name of the distributor for whom any special brand is manufactured, the brand or trade name, and the net content of the bottle in terms of United States liquid measure; or to manufacture or sell, or otherwise introduce into commerce in this State any beer or container or dispensing equipment, carton, or case for beer bearing a label or imprint which by wording, lettering, numbering, or illustration, or in any other manner carries any reference or illusion or suggestion to the alcoholic strength of the product or to any manufacturing process, ageing, analysis, or scientific matter or fact, or upon which appears any such words or combination of words or abbreviations thereof, as "strong," "full strength," "extra strength," "high test," "high proof," "prewar strength," "full old time alcoholic strength," or any words or figures or other marks or characters alluding or relating to "proof," "balling" or "extract," contents of the product, or which bears a label that is untrue in any particular or which directly or by ambiguity, omission, or inference tends to create a misleading impression or causes, or is reasonably calculated to cause deception of the consumer or buyer with respect to the product.

(2) It shall be unlawful for any retail dealer to dispense any draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or the brand of the particular product being at the time dispensed through each faucet or other apparatus, which sign shall be in legible lettering and in full sight of the purchaser.

(3) In addition to other power and authority granted by this Act to the Board or Administrator, said Board shall have the power and authority upon finding it necessary to effectuate the purposes of this Article to adopt rules and regulations to provide a schedule of deposits required to be obtained on any beer containers delivered by any licensee, and any violation of any such regulation shall be unlawful.

(4) Provided that if any provision of this Section 24 is for any reason held unconstitutional and invalid, such decision shall not affect the validity of the remaining portions, and the Legislature hereby declares that it would have passed this Section, and each subsection, provision, sentence, clause, or phrase thereof, irrespective of the fact that any provision is declared unconstitutional. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 24, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

#### Art. 667—25. Transportation of beer

(a) It is hereby declared to be lawful to transport beer, as herein defined, and upon which the tax has been paid and evidenced by stamps as required by law, from any place in this State where the sale, manufacture, and distribution of said beer is authorized by law to any other place within this State where the same may be lawfully manufactured, sold, or distributed; and from the State boundary to any such place, even though in the course of such transportation the route over which the same is being transported may traverse local option territory in which the manufacture, sale, and distribution of said beer is prohibited. Provided, however, that any such shipments must be accompanied by a written statement furnished and signed by the shipper, showing the name and address of the consignor and the consignee, the origin and destination of such shipment, and such other information as may be required by the Board or Administrator; and it shall be the duty of the person in charge of such cargo while it is being so transported to exhibit such written statement to any representative of the Board or any peace officer making demand therefor, and said statement shall be accepted by such officer as prima facie evidence of the lawful right to transport such beer. The transportation of beer not accompanied by statement herein required, or failure to exhibit the same upon lawful demand, shall be a violation of this Act, and any beer being transported in violation hereof shall be subject to seizure without warrant.

(b) Possession by any person in any dry area of beer in any quantity exceeding twenty-four (24) bottles having a capacity of twelve (12) ounces each shall be prima facie evidence of possession for the purpose of sale in a dry area. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 25, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

#### Art. 667—26. Penalty

Any person who violates any provision of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five (\$25.00) Dollars nor more than Five Hundred (\$500.00) Dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

It is provided, however, that in cases where the Administrator or the Board in writing recommends acceptance of a plea of guilty, and such plea is accepted, the decree of the court and assessment of penalty shall not require cancellation of a license as provided in Section 19(p)<sup>1</sup> of this Article, but shall leave the question of cancellation of license in such cases to the discretion of the Board or Administrator, having in mind the purposes of this Act. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 26, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 20.

<sup>1</sup> Article 667—19(p).

Art. 667—27. Restraining orders and injunction; violation of injunction or restraining order, effect of

Upon having called to his attention by affidavit of any credible person that any person is violating, or is about to violate, any of the provisions of the Texas Liquor Control Act or if any permit or license was wrongfully issued, it shall be the duty of the Attorney General, or the District or County Attorney, to begin proceedings to restrain any such person from the threatened or any further violation, or operation under such permit or license, and the District Judge shall have authority to issue restraining orders without hearing, and upon notice and hearing to grant injunction, to prevent such threatened or further violation by the person complained against, and may require the person complaining to file a bond in such amount and containing such conditions and in such cases as the Judge may deem necessary. Upon any judgment of the Court that violation of any restraining order or injunction issued hereunder has occurred, such judgment shall operate to cancel without further proceedings, any license or permit held by the person who is defendant in the proceedings, and no license or permit shall be reissued to any person whose license or permit has been so cancelled, revoked, or forfeited within one year next preceding the filing of his application for a new license or permit. It shall be the duty of the District Clerk to notify the County Judge of the county wherein was issued any license or permit so cancelled, and to notify the Board of any judgment of a Court which may operate hereunder to cancel a license or permit. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 27, as added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.

## TITLE 12—PUBLIC HEALTH

### CHAPTER ONE—ACTS INJURIOUS TO HEALTH

Art.

700a. New; repealed.

700b. Sterilization of dishes; use of broken or cracked dishes and unlaundered napkins; definitions of terms [New].

Art.

705c. Sanitary employees; physical examination and health certificate required of employees handling or dispensing food or drink [New].

Art. 700. [Repealed by Acts 1937, 45th Leg., p. 667, ch. 333, § 8.]

Effective 90 days after May 22, 1937, date of adjournment.

Art. 700a. Repealed. Acts 1939, 46th Leg., p. 234, § 8. Effective May 10, 1939

Article was derived from Acts 1937, 45th Leg., p. 667, ch. 333, as amended Acts 1937, 45th Leg., 2nd C.S., p. 1952, ch. 51.

Art. 700b. Sterilization of dishes; use of broken or cracked dishes and unlaundered napkins; definitions of terms

Section 1. As used in this Act, unless the context otherwise indicates:

(a) The term "Person" includes individual, partnership, corporation, and association.

(b) The term "Dish" includes all vessels of any shape or size, constructed of any material whatsoever, commonly used in eating or drinking.

(c) The term "Utensil" includes all vessels of any shape or size, constructed of any material, commonly used in preparing, holding, storing, or transporting food, and all articles, of whatsoever construction, size, or shape, used in serving or eating food.

(d) The term "Liquor Dispensary" includes all places where beers, ales, wines, or any other alcoholic beverages are stored, prepared, labeled, bottled, or served, or otherwise handled.

(e) The term "Receptacle" includes all vessels, trays, pots, pans, or other articles used for holding food.

(f) The term "Factory" includes all places in which is carried on the business of manufacturing or preparing food for human consumption.

#### Sterilization of dishes, receptacles, or utensils

Sec. 2. No person, firm, corporation, or association operating, managing, or conducting any hotel, cafe, restaurant, dining car, drug store, soda water fountain, meat market, bakery, or confectionery, liquor dispensary or any other establishment where food or drink of any kind is served or permitted to be served to the public, shall furnish to any person any dish, receptacle, or utensil used in eating, drinking, or conveying food if such dish, receptacle, or utensil has not been washed after each service until clean to the sight and touch in warm water containing soap or alkali cleanser. After cleaning, all glasses, dishes, silverware, and other receptacles and utensils shall be placed in wire cages and immersed in a still bath of clear water heated to a minimum temperature of 170°F for at least three minutes, or two minutes at 180°F. Upon removal from the hot water, all glasses, dishes, silverware, and other re-

ceptacles and utensils shall be stored in such a manner as not to become contaminated. Provided that the State Board of Health may approve other equally effective methods of treatment by steam or hot water that meet with the minimum requirements for the safety of the public health, as prescribed by the State Board of Health, that are not inconsistent with this Act. When paper receptacles, ice cream cones, or other single service utensils are used for serving food or drinks, they must be kept in a sanitary manner, protected from dust, flies, and other contamination.

Provided that the provisions of this Section shall not apply to such establishments as described herein that use electrically operated dish-washing and glasswashing machines, that accomplish these purposes mechanically.

#### **Broken dishes, receptacles, and utensils**

Sec. 3. (a) No dish, receptacle, or utensil shall be used or kept for use by any public eating or drinking establishment, or any factory, to hold or convey food intended for human consumption if said dish, receptacle, or utensil is chipped, cracked, or broken, or constructed in such a manner as to render its cleansing and/or sterilization impossible or doubtful.

#### **Clean napkins**

Sec. 4. (a) No napkin, or cloth, or other article that has been used, shall be furnished any person until said napkin, cloth, or other article shall have been laundered or sterilized, subsequent to any other use.

(b) No napkins, straws, toothpicks, or any other articles shall be offered for the use of any person if said napkins, straws, toothpicks, or other articles have not been securely protected from dust, dirt, insects, rodents, and, as far as may be necessary, by all reasonable means, from all contaminations.

#### **Dishes, receptacles, and utensils in food factories**

Sec. 5. No person, firm, corporation, or association operating, managing, or conducting any food factory or place where food is manufactured shall use or keep for use any dish, utensil, ladle, or other instrument, or any food grinding machine or implement that has not been washed and sterilized, as provided in the preceding Section of this Act for dishes and other articles before each use, or keep for use, or use any dish, utensil, or other article for food that is cracked, broken, chipped, or otherwise damaged in a manner to render proper cleaning or sterilizing doubtful or impossible.

#### **Poisonous cleaners and polishes**

Sec. 6. No dish, utensil, or instrument used in eating or drinking shall be offered for use to any person, or used in the manufacturing of food, if said dish, utensil, or instrument has been cleaned or polished by means of any cyanide or other poisonous substance. This provision shall not apply to any dish, utensil, or instrument if said dish, utensil, or instrument has been subsequently cleaned in a manner that all traces of said poisonous substance shall have been removed.

#### **Penalty**

Sec. 7. Whoever shall do any act or thing prohibited, or neglect or refuse to do any act or thing required by the preceding Sections of this Chapter, or in any way violate any provisions thereof, shall be fined any amount not less than Five Dollars (\$5) nor more than One Hundred Dollars (\$100).

**Repealing clause**

Sec. 8. Article 700a, Title 12, Chapter 1, Revised Criminal Statutes of the State of Texas, and all other laws and parts of laws in conflict with this Act are hereby repealed.

**Unconstitutional clause**

Sec. 9. If any sentence, phrase, clause, subsection, or section of this Act is declared unconstitutional or inoperative, it shall not affect the validity or effect of any other portion of the Act. Acts 1939, 46th Leg., p. 234.

Effective May 10, 1939.

Section 10 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act to better safeguard the health of the people of the State of Texas by making it unlawful to serve food in improperly cleaned or unsterilized dishes or utensils; defining terms; providing rules for cleaning and sterilizing dishes or utensils; prohibiting the use of cracked or broken dishes and utensils, and unlaundered napkins and unprotected napkins, straws, and

other articles commonly used in eating and drinking; prohibiting the use of unsterilized or broken utensils in factories; providing penalties; repealing Article 700a, Title 12, Chapter 1, Revised Criminal Statutes of Texas; making certain exemptions; saving to the State the right to prosecute for violation prior to the repeal of these Articles; providing that if any particular section or part of this Act is held unconstitutional or inoperative, such defect shall not affect any other section or part of this Act; and declaring an emergency. Acts 1939, 46th Leg., p. 234.

**Art. 705. Repealed by Acts 1937, 45th Leg., p. 707, ch. 356, § 3.**

Effective 90 days after May 22, 1937, date of adjournment.

**Art. 705c. Sanitary employees; physical examination and health certificate required of employees handling or dispensing food or drink**

Section 1. No person, firm, corporation, common carrier or association operating, managing, or conducting any hotel or any other public sleeping or eating place, or any place or vehicle where food or drink or containers therefor, of any kind, is manufactured, transferred, prepared, stored, packed, served, sold, or otherwise handled in this State, or any manufacturer or vendor of candies or manufactured sweets, shall work, employ, or keep in their employ, in, on, or about any said place or vehicle, or have delivered any article therefrom, any person infected with any transmissible condition of any infectious or contagious disease, or work, or employ any person to work in, on, or about any said place, or to deliver any article therefrom, who, at the time of his or her employment, failed to deliver to the employer or his agent, a certificate signed by a legally licensed physician, residing in the county where said person is to be employed, or is employed, attesting the fact that the bearer had been actually and thoroughly examined by such physician within a week prior to the time of such employment, and that such examination disclosed the fact that such person to be employed was free from any transmissible condition of any infectious or contagious disease; or fail to institute and have made, at intervals of time not exceeding six months, actual and thorough examinations, essential to the findings of freedom from communicable and infectious diseases, of all such employees, by a legally licensed physician residing in the county where said person is employed, and secure in evidence thereof a certificate signed by such physician stating that such examinations had been made of such person, disclosing the fact that he or she was free from any transmissible condition of any communicable and infectious diseases.

**Candies or manufactured sweets**

Sec. 2. Provided further that it shall be unlawful for any manufacturer or vendor of candies or manufactured sweets to knowingly consign, sell, or furnish in any way candies or manufactured sweets to any person or persons for the purpose of resale at or from their private residence who does not display a complete valid health certificate issued for each member of the family or household, signed by a licensed physician authorized to practice medicine in this State, and who resides in the county where such person was examined, and who does not have a sanitary show case or place of display for the protection of such candies or manufactured sweets.

**Health certificate to be displayed; contents of certificate**

Sec. 3. All health certificates called for by this Act shall be displayed for public inspection at the place where the person named thereon is employed, and shall not be removed from such place during the continuance of such employment except by a public health officer, his duly appointed agent, or upon valid court order. All such certificates shall bear the employee's signature, the name of the physicians executing examinations and tests, and shall describe the color of eyes, and hair, height, weight, race, sex, age, and date of issuance, and shall be valid for six months only. Public health departments, and local lawmaking bodies, are hereby authorized to establish such further rules, regulations and ordinances as they may deem essential to the execution of the intentions of this Act; providing, however, that all conditions of this Act shall be requisite to all such regulations and ordinances, except, that the said authorities may adopt a plan for the registration of the physicians' certificates required by this Act and in lieu thereof issue a registration card to show that the person named thereon has complied with all of the provisions of this Act; providing further that the said registration card must bear the signature of the person named thereon and shall be displayed for public inspection at the place where such a person is employed.

**Failure to display certificate**

Sec. 4. The failure of any person, firm, corporation, common carrier or association engaged in any of the businesses described in this Act, to display at the place where any of the operations of such businesses are being conducted, a valid health or registration certificate, as required by this Act, for each person employed in, on, or about such place, shall be prima facie evidence that the said person, firm, corporation, common carrier or association, in violation of requirements called for by this Act, failed to require the exhibition of the pre-employment health certificate, of such person and failed to institute and have made of such person, actual and thorough examinations necessary to the findings of freedom from communicable diseases at intervals of time not exceeding six months.

**Penalty**

Sec. 5. Whoever violates any provision of this Act shall be fined in an amount not exceeding Two Hundred Dollars (\$200). Each act or omission in violation of any of the provisions of this Article, shall constitute a separate offense and shall be punishable as hereinabove prescribed.

**Partial invalidity**

Sec. 6. If any provision, section or part of this Act is declared unconstitutional or held invalid, or the applicability thereof to any person



or circumstances is held invalid, the constitutionality of the remainder of the Act and the application thereof to the persons and other circumstances shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

#### Repeal of conflicting laws

Sec. 7. (a) All laws and parts of laws in conflict herewith are hereby repealed. (b) Provided that nothing in this Section or in the Title of this Act, or in any Section of this Act, shall be construed to preclude the prosecution of any person, firm, corporation, common carrier or association, or persons for acts or omissions in violation of any of the provisions repealed by this Section where such acts or omissions take place prior to time of repeal of such provision by this Section. Acts 1937, 45th Leg., p. 707, ch. 356; as amended Acts 1939, 46th Leg., p. 231, § 1.

Effective April 26, 1939.

Section 2 of the amendatory Act of 1939 the Act should take effect from and after declared an emergency and provided that its passage.

## CHAPTER TWO—UNWHOLESOME FOOD, DRINK OR MEDICINE

Art.

719c—1. Coloring citrus fruit; definitions  
[New].

Art. 709. Preservatives added; regulations by State Board of Health

No person shall manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate, sulphurous acids or sulphites, salicylic acid or salicylates, abrostol, beta naphthol, fluorine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except diluted phosphoric acid, any preparation of lead or copper or other ingredients injurious to health; provided, however, that organic salicylates used for flavoring, such as methyl salicylate, oil of betula lenta or oil of gaultheria procumbens shall not be prohibited; nothing herein shall be construed as prohibiting the sale of foods or drinks preserved with one-tenth of one per cent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated on the label.

The State Board of Health is hereby authorized, for the protection of the public health, to promulgate regulations limiting the quantity of oxides of sulphur and other bleaching, clarifying or refining agents, that may be used for bleaching, clarifying or refining fruits, vegetables and other foods. As amended Acts 1937, 45th Leg., p. 540, ch. 266, § 1.

Amendment of 1937, effective May 5, 1937. p. 540, ch. 266 declared an emergency making the act effective on and after its passage.

Section 2 of the amendatory Act of 1937

Art. 719c—1. Coloring citrus fruit; definitions

Section 1. Definitions.

As used in this Act:

(a) The term "citrus fruit" means and includes only the fruits Citrus Grandis, Osbeck, commonly called grapefruit, and Citrus Sinensis, Osbeck, commonly called oranges, and Citrus Nobilis Delicios, commonly called tangerines, or any of them, grown in the State of Texas.

(b) The term "person" shall extend to and include persons, partnerships, associations, and corporations, and any other business unit.

(c) "Coloring matter" means and includes any dye or any liquid or concentrate, or material containing a dye, or materials which react to form a dye, used or intended to be used for the purpose of enhancing the color of citrus fruit by the addition of artificial color to the peel thereof; provided that said term shall not include any process or treatment of fruit which merely brings out or accelerates the natural color of fruit.

(d) "Commissioner" shall mean the Commissioner of Agriculture of the State of Texas.

(e) "Manufacturer" means and includes any person who shall manufacture or sell, or offer for sale, or license or offer to license for use, any coloring matter.

**Certification of dyes as harmless by United States Department of Agriculture; temporary permits**

Sec. 2. It shall be unlawful for any manufacturer to use or include, in the manufacture of any coloring matter, any dye or color other than one that has been duly certified, by the United States Department of Agriculture, as harmless and suitable for use in foods; provided, that in the case of a dye or color for which certification is pending, the Commissioner shall issue a temporary permit allowing the use of such dye or color, pending such certification, when upon analysis thereof, made pursuant to regulations promulgated by the Commissioner as hereinafter authorized, the said dye or color shall have been found to contain no amount of antimony, arsenic, barium, lead, copper, mercury, or zinc, or other heavy metals, or other substances known to be injurious to health, in excess of amounts thereof permitted in certified food colors by regulations of the United States Department of Agriculture; and provided further, that the cost of such analysis shall be paid by the manufacturer desiring to use such color.

**Formula furnished Commissioner; analysis of formula**

Sec. 3. Every manufacturer, before selling or offering for sale, or licensing or offering to license for use, any coloring matter, shall furnish the Commissioner with the complete formula followed in the manufacture of such coloring matter, (including, in event of the use of a non-certified dye under the provisions of Section 2 hereof, the formula for such dye) together with a sample of such coloring matter in such amount as the Commissioner may direct. The Commissioner shall cause the said formula to be examined, and the said sample to be analyzed, and if there shall be found in either any ingredient prohibited under Section 2 hereof, or any other ingredient known to be dangerous to health under the conditions of its use, or if the said coloring matter shall vary in any material or substantial degree from the formula so furnished, then such coloring matter shall not be used on citrus fruits, and the manufacturer shall be denied the license hereinafter required. If such coloring matter is found suitable for use in food under the provisions of this and Section 2 hereof, then the coloring matter shall be authorized for use on citrus fruits, and the manufacturer shall be licensed as hereinafter provided. Thereafter the Commissioner shall, from time to time, cause sample of coloring matter to be taken at the manufacturer's place of business, and shall cause the same to be analyzed, and if the coloring matter shall be found to contain any ingredient herein prohibited, or if it varies in any material or substantial degree from the formula therefor as filed with the Commissioner, then such coloring matter shall not be used on citrus fruit, and the manufacturer thereof shall be subjected to

the penalties of this Act; provided, however, that the formula so filed with the Commissioner shall be held as confidential, and shall only be divulged to the Commissioner or his duly authorized representatives or upon orders of a Court of competent jurisdiction when necessary in the enforcement of this Act.

**Licenses to manufacture, sell, or use formula; bond; action on bond**

Sec. 4. Before offering any such coloring matter for sale or use, the manufacturer thereof shall first procure from the Commissioner a license to manufacture and sell or license the use of the same, and shall at the same time execute and deliver to the Commissioner a cash bond or surety bond executed by such manufacturer as principal and by a surety company qualified and authorized to do business in this State, as surety, in the amount of Five Thousand Dollars (\$5,000). Said bond shall be in the form approved by the Commissioner and shall be conditioned to guarantee that such coloring matter is free from any matter or ingredient that is hurtful to the quality of such citrus fruit and is free from any ingredient that is in any way injurious to health. Said bond shall be payable to the Governor of the State of Texas and his successors in office, and the aggregate accumulated liability under any such bond shall not exceed the amount named therein. Any person claiming to be injured by a breach of any of the conditions of said bond may maintain an action on the same against the principal and surety named in said bond, or either of them, and any judgment against the principal and surety, or either of them, in any such action, shall include costs.

**Approval of Commissioner**

Sec. 5. It shall be unlawful for any person to treat any citrus fruit with, or apply thereto, any coloring matter which has not first received the approval of the Commissioner as herein provided.

**Standards for fruit to be colored**

Sec. 6. It shall be unlawful for any person to use on citrus fruit, or apply thereto, any coloring matter unless such fruit passes the requirements of the State maturity tests, and in addition thereto, oranges shall pass the following minimum requirements for total soluble solids of the juice thereof and for ratio of total soluble solids of the juice thereof to anhydrous citric acid:

(a) When the total soluble solids of the juice is not less than nine (9) per cent, the minimum ratio of total soluble solids to the anhydrous citric acid shall not be less than nine to one.

(b) When the total soluble solids of the juice is not less than eight and one-half ( $8\frac{1}{2}$ ) per cent, the minimum ratio of total soluble solids to the anhydrous citric acid shall be not less than ten to one.

(c) Coloring matter shall not in any case be applied to any oranges which do not meet the standards set out in subsections (a) and (b) above. Likewise, coloring matter shall not in any case be applied to any oranges unless the juice content thereof shall be at least four and one-half ( $4\frac{1}{2}$ ) gallons to each standard packed box of one and three-fifths ( $1\frac{3}{5}$ ) bushels capacity, the juice to be extracted by hand, without mechanical pressure.

(d) In determining the total soluble solids of citrus fruit within the purpose and meaning of this Act, the Brix hydrometer shall be used, and the reading of the hydrometer corrected for temperatures shall be considered as the per centum of the total soluble solids. Anhydrous citric acid shall be determined by titration of the juice, using standard

alkali and phenolphthalein as the indicator, the total acidity being calculated as anhydrous citric acid.

#### Rules and regulations

Sec. 7. The Commissioner shall have power to pass, make, and promulgate all needful rules and regulations for the proper enforcement and carrying out of this Act, and such rules or regulations, not inconsistent herewith, shall have the force and effect of law. He is expressly authorized to promulgate such rules as may be necessary to insure that fruit to which color has been added, shall not unreasonably vary in color from the color of the best ripe fruit of the same variety generally produced in the State of Texas.

#### Enforcement of Act; Chief of Maturity Division; additional salary

Sec. 8. The enforcement of this Act and of the rules and regulations promulgated by the Commissioner shall be under the direction and control of the Commissioner, and shall be intrusted by him to the Chief of the Maturity Division who shall be allowed an additional salary, payable as hereinafter stated, of One Hundred and Twenty-five Dollars (\$125) per month for so doing. All employees, inspectors, and officers of the Commissioner authorized by Chapter 244, Acts of the Regular Session of the Forty-second Legislature, as amended,<sup>1</sup> shall also be charged with such duties hereunder as may be imposed by the Commissioner, or the Chief of the Maturity Division.

<sup>1</sup> Article 719a.

#### Inspection of fruit to be colored; certificates of inspection; notice

Sec. 9. That the said Commissioner is hereby authorized and empowered to enter upon and inspect personally, or through his authorized inspectors or agents, any place within the State of Texas where citrus fruit is being prepared or colored under the provisions of this Act, and to inspect any citrus fruit found therein, and he or they shall issue certificates of inspection in the form prescribed by him certifying that such citrus fruit complies with the provisions hereof in the event that he or they shall so find upon such inspection.

Every person before using or permitting the use of any coloring matter on citrus fruit shall notify the Commissioner or the Chief of the Maturity Division of his intention so to do, upon such forms as may be prescribed by and furnished by the Commissioner, and shall from time to time request inspection of all citrus fruit to be so treated. The Commissioner shall cause inspection thereof from time to time in such manner as he may determine necessary and proper. The inspector may designate a time within usual packing hours when all fruit not passing the inspections preceding coloration shall be packed or otherwise disposed of in his presence without being colored.

#### Assessments and fees; disposition of proceeds

Sec. 10. All citrus fruit treated with coloring matter as provided herein shall be assessed at such rates as may be fixed by the Commissioner within the following limits:

All containers with a capacity of more than one-half bushel shall be assessed at the rate of not to exceed One Cent for each such container.

All containers with a capacity of one-half bushel or less shall be assessed at the rate of not to exceed One-half Cent for each such container.

All such fruit as is sold or transported in bulk shall be assessed at the rate of One Cent for each eighty (80) pounds or fraction thereof.

The amount of the fees referred to in this Section shall be fixed by the Commissioner from time to time, at a figure as near as possible the cost of administering this Act.

Such assessments shall be paid to the Commissioner or his agent by the person applying coloring matter to such citrus fruit, and shall be paid over to the State Treasurer who shall deposit said money to the account of "Special Citrus Fruit Inspecting Fund" created by the above mentioned Chapter 244, Acts, Regular Session of the Forty-second Legislature, as amended, which shall be a continuing fund.

The Commissioner is hereby authorized and empowered to use the moneys in said fund in defraying the expenses of the administration of this Act.

#### **Marking or branding colored fruit**

Sec. 11. Each piece of fruit treated with coloring matter as provided herein shall be branded or marked with the words "Color Added" in letters at least three-sixteenths of an inch in height, but this provision shall be deemed to have been complied with if not more than ten (10) per cent of any such fruit is imperfectly or partially marked or branded. In the event such fruit is branded or marked with a trade-mark or name, or brand, by a two-line die in one operation, such words "Color Added" shall be placed above the trade-mark or name or brand.

Each package or container in which is sold, delivered, transported, or delivered for transportation any citrus fruit treated with coloring matter as provided herein, shall be marked, or branded, or have attached thereto securely a tag upon which is marked or branded the words "Color Added" in letters at least three-fourths of an inch in height, provided that the Commissioner may by regulation change the requirements of this Section to conform to any law or regulation promulgated under Federal authority.

#### **Fruit unfit for consumption**

Sec. 12. All citrus fruit which has been treated with coloring matter but which upon inspection fails to comply with any provision of this Act, and lawful rules and regulations issued thereunder, or that may be found to be otherwise unfit for consumption is hereby declared to be a public nuisance detrimental to the public health and the sale thereof is declared to be a fraud upon the public health and said fruit shall be seized and destroyed by the citrus fruit inspectors or by the sheriff of the county where found. Provided, however, that the owner thereof may be allowed to retain the same under such reasonable regulations as the Commissioner may prescribe for the disposition thereof.

#### **False certificates of inspection; necessity and requisites of certificates**

Sec. 13. It shall be unlawful for any person to make or issue any false certificate of inspection hereunder, or to ship, sell, deliver, transport, or deliver for transportation, or receive for transportation any citrus fruit which has been treated with coloring matter, unless all of the provisions of this Act in regard to such citrus fruit shall have been previously complied with and unless such fruit is accompanied by a certificate of inspection as provided for in Section 9 of this Act, which certificate shall also show that the assessments or fees prescribed herein in regard to such citrus fruit have been paid.

**Penalty**

Sec. 14. Any person who violates any of the provisions of this Act, or any of the lawful rules and regulations promulgated by the Commissioner in pursuance hereof and not inconsistent herewith, or who does or commits any act herein declared to be unlawful shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or by imprisonment for not to exceed six (6) months, or by both fine and imprisonment.

**Construction of Act; partial invalidity**

Sec. 15. This Act shall be liberally construed and if any part or portion thereof be declared invalid of the application thereof to any person, thing, or circumstances is declared invalid, the validity of the remainder of this Act or the applicability thereof to any other person, circumstances, or thing shall not be affected thereby, and it is the intention of the Legislature to preserve any and all parts of said Act if possible. Acts 1939, 46th Leg., p. 49.

Effective May 8, 1939.

Section 16 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act defining coloring matter and its composition, manufacture, sale, and use in connection with citrus fruit; defining other terms as used in this Act; providing for the analysis of such coloring matter by the Commissioner of Agriculture and for the licensing of the manufacturers thereof; making it unlawful to use any dye or color not certified by the United States Department of Agriculture; providing cost of analysis to be paid by manufacturer; providing formula to be furnished Commissioner; prescribing the form and amount of bond to be given by such manufacturers; prohibiting the use of harmful coloring matter on citrus fruit; prescribing the maturity of fruit to which such coloring matter is applied; authorizing the Com-

missioner of Agriculture to issue rules and regulations pursuant to such Act; providing for the enforcement thereof by the Chief of Maturity Division and other agents of the Commissioner of Agriculture and fixing compensation of such Chief for so doing; providing for the inspection of citrus fruit treated with coloring matter and assessing the cost of enforcing the Act against such fruit so treated; providing for disposition of funds; providing for the branding of fruit treated with coloring matter and containers in which it is shipped and prohibiting the application of unauthorized coloring matter to citrus fruit; declaring citrus fruit which does not comply with the Act to be dangerous to public health and a public nuisance and providing for disposition of same; providing penalties for violation of the Act; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., p. 49.

**CHAPTER THREE—DRUGS, NARCOTICS AND POISONS****Art.**

725b. Narcotic drug regulations; definitions [New].

Arts. 720–725. Repealed by Acts 1937, 45th Leg., p. 333, ch. 169, § 27.

Effective 90 days after May 22, 1937,  
date of adjournment.

Art. 725a. Repealed by Acts 1937, 45th Leg., p. 333, ch. 169, § 27.

Effective 90 days after May 22, 1937,  
date of adjournment.

**Art. 725b. Narcotic drug regulations; definitions**

Section 1. The following words and phrases, as used in this Act, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this State and any other person authorized by law to treat sick and injured human beings in this State and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this State.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this State.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this State and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this Act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the Pharmacy Laws of this State.

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Department of Public Safety, as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(9) "Laboratory" means a laboratory approved by the Department of Public Safety as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(11) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts.

(13) The term "Cannabis" as used in this Act shall include all parts of the plant *Cannabis Sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the nonresinous oil obtained from such seed, nor the mature stalks of such plant, nor any product or manufacture of such stalks, except the resin extracted therefrom and any compound, manufacture, salt, derivative, mixture, or preparation of such resin. The term "Cannabis" shall include those varieties of *Cannabis* known as *Marihuana*, *Haseesh* and *Hasish*.

(14) "Narcotic drugs" means coca leaves, opium, pyote, mescal bean, and cannabis, and every substance neither chemically nor physically distinguishable from them.

(15) "Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

(16) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics,

under any laws of the United States making provision therefor, if such order forms are authorized and required by Federal law, and if no such order form is provided, then on an official form provided for that purpose by the Department of Public Safety.

(17) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(18) "Registry number" means the number assigned to each person registered under the Federal Narcotic Laws.

#### Acts prohibited

Sec. 2. It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug.

#### Authorized acts

Sec. 2A. It shall not be unlawful to manufacture, possess, have, control, sell, prescribe, administer, dispense, or compound any narcotic drug where same is authorized under the terms of this Act.

#### Manufacturers and wholesalers

Sec. 3. No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler or as an apothecary shall supply the same, without having first obtained a license to so do from the Department of Public Safety. A fee of Fifty (50) Cents shall be charged and collected by the Department of Public Safety, such fee to accompany the application for each license issued under the provisions of this Act, such filing fee to be deposited by the Department of Public Safety with the State Treasurer on each business day following the receipt thereof and the same shall be credited to the General Fund of this State. Such licenses shall be issued by the Department of Public Safety upon the effective date of this Act to be in effect until July 1, 1938, and the same shall be renewed by July 1st of each succeeding year. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1970, ch. 58, § 1.]

Effective Oct. 26, 1937.

Section 3 of the amendatory act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

#### Qualification for licenses

Sec. 4. No license shall be issued under the foregoing Section unless and until the applicant therefor has furnished proof satisfactory to the Department of Public Safety:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five (5) years been convicted of a willful violation of any law of the United States, or of any State, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict.

The Department of Public Safety may suspend or revoke any license for cause.

#### Sale on written orders

Sec. 5. (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler, or apothecary.



(b) To a physician, dentist, or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the Federal Narcotic Laws, to a person in the employ of the United States Government, or of any State, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some State, Territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft when not in port. Provided, such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft or to the physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(c) To a person in a foreign country if the provisions of the Federal Narcotic Laws are complied with.

(3) (Use of Official Written Orders). An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In the event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two (2) years in such way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this Act. It shall be deemed a compliance with this Subsection if the parties to the transaction have complied with the Federal Narcotic Laws, respecting the requirements governing the use of order forms.

(4) (Possession Lawful). Possession of or control of narcotic drugs obtained as authorized by this Section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other State, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some State, Territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft, who obtains narcotic drugs under the provisions of this Section or otherwise, shall not administer nor dispense, nor otherwise use such drugs, within this State, except within the scope of his employment or official duty, and then only for scientific or medical purposes and subject to the provisions of this Act.

#### Sales by apothecaries

Sec. 6. (1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician,

dentist, or veterinarian, dated and signed by the person prescribing on the second day after the same is issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the Federal Narcotic Laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two (2) years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this Act. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty (20) per cent of the complete solution, to be used for medical purposes.

#### Professional use of narcotic drugs

Sec. 7. (1) (Physicians and Dentists). A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

(2) (Veterinarians). A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) (Return of Unused Drugs). Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian, shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient.

#### Preparations exempted

Sec. 8. Except as otherwise in this Act specifically provided, this Act shall not apply to the following cases:

(1) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce, (a) not more than two (2) grains of opium, (b) not more than one-quarter of a grain of morphine or of any of its salts, (c) not more than one grain of codeine or of any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts, (e) not more than one-half of a grain of extract of cannabis nor more than one-half of a grain of any more potent derivative or preparation of cannabis, (f) and not more than one of the drugs named above in clauses (a), (b), (c), (d), and (e).

(2) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations, that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or

preparations, except that this Act shall apply to all liniments, ointments, and other preparations, that contain coca leaves in any quantity or combination.

The exemptions authorized by this Section shall be subject to the following conditions:

(a) No person shall prescribe, administer, dispense, or sell under the exemptions of this Section, to any one person, or for the use of any one person or animal, any preparation or preparations included within this Section, when he knows, or can by reasonable diligence ascertain, that such prescribing, administering, dispensing, or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which such preparation is prescribed, administered, dispensed, or sold, within any forty-eight (48) consecutive hours, with more than four grains of opium, or more than one-half grain of morphine or of any of its salts, or more than two (2) grains of codeine or of any of its salts, or more than one-quarter of a grain of heroin or of any of its salts, or more than one grain of extract of cannabis or one grain of any more potent derivative of or preparation of cannabis, or will provide such person or the owner of such animal, within forty-eight (48) consecutive hours, with more than one preparation exempted by this Section from the operation of this Act.

(b) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this Act.

Nothing in this Section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this Act.

#### Record to be kept

Sec. 9. (1) (Physicians, Dentists, Veterinarians, and other Authorized Persons). Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this Subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up by him, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided, that no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight (48) consecutive hours, (a) four (4) grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) two (2) grains of codeine or of any of its salts, or (d) one-fourth of a grain of heroin or of any of its salts, or (e) one grain of extract of cannabis or one grain of any more potent derivative or preparation of cannabis, or (f) a quantity of any other narcotic drug

or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) (Manufacturers and Wholesalers). Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of Subsection 5 of this Section.

(3) (Apothecaries). Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of Subsection 5 of this Section.

(4) (Vendors of Exempted Preparations). Every person who purchases for resale, or who sells narcotic drug preparations exempted by Section 8 of this Act, shall keep a record showing the quantities and kinds thereof received and sold or disposed of otherwise, in accordance with the provisions of Subsection 5 of this Section.

(5) (Form and Preservation of Records). The form of records shall be prescribed by the Department of Public Safety. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis Sativa L.* The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two (2) years from the date of the transaction recorded. The keeping of a record required by or under the Federal Narcotic Laws, containing substantially the same information as is specified above, shall constitute compliance with this Section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

#### Labels

Sec. 10. (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this Act, shall alter, deface, or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name and address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such di-

rections as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed.

#### **Authorized possession of narcotic drugs by individuals**

Sec. 11. A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed, by a physician, dentist, apothecary, or other person authorized under the provisions of Section 5 of this Act, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him, by the person selling or dispensing the same.

#### **Persons and corporations exempted**

Sec. 12. The provisions of this Act restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs; or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

#### **Common nuisances**

Sec. 13. Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance.

#### **Contraband—Seizure**

Sec. 14. All narcotic drugs, as herein defined, manufactured, sold, or had in possession contrary to any provision hereof, shall be, and the same are declared to be contraband, and shall be subject to seizure and confiscation by any officer or employee of the Department of Public Safety or by any peace officer who is authorized to and charged with the duty of enforcing the provisions of this Act.

#### **Seizure without warrant**

Sec. 15. Officers and employees of the Department of Public Safety, and all peace officers who have authority to, and are charged with the duty of enforcing the provisions of this Act, shall have power and authority, without warrant, to enter and examine any buildings, vessels, cars, conveyances, vehicles, or other structures or places, when they have reason to believe and do believe that any or either of same contain narcotic drugs manufactured, bought, sold, shipped, or had in possession contrary to any of the provisions of this Act, or that the receptacle containing the same is falsely labeled, except when any such building, vessel, or other structure is occupied and used as a private residence, in which event a search warrant shall be procured as hereinbelow provided.

Said officers and employees of the Department of Public Safety and all peace officers who have authority to, and are charged with the duty of enforcing the provisions of this Act, shall further have power and authority, without warrant, to open and examine any box, parcel, barrel, package, or receptacle in the possession of any person which they have reason

to believe, and do believe contain narcotic drugs manufactured, bought, sold, shipped, or had in possession contrary to any of the provisions of this Act and that the receptacle containing same is falsely labeled.

Officers and employees of the Department of Public Safety and peace officers who have authority to, and are charged with the duty of enforcing the provisions of this Act, when acting under circumstances and conditions where a search or inspection is authorized without a warrant, as immediately hereinabove provided shall be given free access to and shall not be hindered or interfered with in their examination of buildings, vessels, cars, conveyances, vehicles, or other structures or places, and in case any officer or employee of the Department of Public Safety is hindered or interfered with in making such examination, any license held by the person preventing such free access or interfering or hindering such officers, employees, or employee, shall be subject to revocation by the Department of Public Safety.

Officers and employees of the Department of Public Safety and all peace officers who have authority to, and are charged with the duty of enforcing the provisions of this Act, shall have authority to take into their possession any and all narcotic drugs found by them as a result of any search or inspection without a warrant, as authorized by this Section of this Act provided that said officers shall be required to issue to the person from whose possession said narcotics are taken a receipt therefor if said person is present and to immediately file a sworn inventory of all narcotic drugs taken with any magistrate in the county where said narcotic drugs are taken, and the retention and disposition of said narcotic drugs so taken by any said officer shall, after coming into his possession, be controlled by the applicable provisions of Section 16 hereof.

#### Search warrants—Issuance

Sec. 16. Whenever any officers or employee of the Department of Public Safety or any peace officer who has the authority to and is charged with the duty of enforcing the provisions of this Act, shall have reason to believe that any person has in his possession any narcotic drugs contrary to the provisions hereof, he may file, or cause to be filed his sworn complaint to such effect before any magistrate of the county in which any such narcotic drugs are located, and procure a search warrant and examine the same. The application for the issuance of and execution of any such search warrant hereunder, and all proceedings relative thereto, shall conform as near as may be to the provisions of Title 6 of the Code of Criminal Procedure, except where otherwise provided in this Act. Upon the execution of such search warrant the officer executing the same shall make due return thereof to the Court issuing the same, together with a sworn inventory of all narcotic drugs taken thereunder. The Court shall thereupon issue process against the person owning or controlling the narcotic drugs and upon return thereof it shall proceed to determine whether or not the same are held or possessed in violation of the provisions of this Act, and make up a finding to the effect that the drugs are so illegally held or possessed, a judgment shall be entered against the owner or person found in the possession of the same for the costs of the proceedings and provide for the disposition of the property forfeited, as provided by the terms hereof. In no event shall the narcotic drugs seized by any authorized person under authority of a search warrant or without authority of a search warrant be taken from the custody of any officer or other person authorized to seize same, by writ of replevin or other process, but the same shall be held by the officer to await the final judgment in such criminal proceedings as may be had thereon.

**Narcotic drugs to be delivered to State officials, etc.**

Sec. 17. All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this Section otherwise provided, the Judge of the District Court having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the said District Court and to the United States Commissioner of Narcotics, by the officer who destroys them.

(b) Upon written application by the Department of Public Safety, the Judge of the District Court by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Department of Public Safety, for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this State, not operated for private gain, the Department of Public Safety may in its discretion deliver any narcotic drugs that have come into its custody by authority of this Section to the applicant for medicinal use. The Department of Public Safety may from time to time deliver excess stocks of such narcotic drugs to the United States Commissioner of Narcotics, or may destroy the same.

(d) The Department of Public Safety shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received, and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all Federal or State Officers charged with the enforcement of Federal and State Narcotic Laws.

**Notice of conviction to be sent to Licensing Board**

Sec. 18. On the conviction of any person of the violation of any provisions of this Act, a copy of the judgment and sentence, and of the opinion of the Court or magistrate, if any opinion be filed, shall be sent by the Clerk of the Court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the Court may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration.

**Records, confidential**

Sec. 19. Prescriptions, orders, and records, required by this Act, and stocks of narcotic drugs, shall be open for inspection only to Federal, State, county, and municipal officers, whose duty it is to enforce the laws of this State or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in Court or before a licensing or registration board or officer, to which prosecution or proceeding

the person to whom such prescriptions, orders, or records relate is a party.

#### **Fraud or deceit**

Sec. 20. (1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this Act.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this Section shall apply to all transactions relating to narcotic drugs under the provisions of Section 8 of this Act, in the same way as they apply to transactions under all other Sections.

#### **Exceptions and exemptions not required to be negatived**

Sec. 21. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this Act, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this Act, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant.

#### **Enforcement and cooperation**

Sec. 22. It is hereby made the duty of the Department of Public Safety, its officers, agents, inspectors, and representatives, and of all peace officers within the State, including all peace officers operating under the jurisdiction of the Department of Public Safety, or that may hereafter operate under its jurisdiction and all County Attorneys, District Attorneys, and the Attorney General to enforce all provisions of this Act, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State, and of all other States, relating to narcotic drugs.

There is hereby appropriated out of any funds not already appropriated, the sum of Twenty Thousand Dollars (\$20,000) for the use of the Department of Public Safety for the necessary expenses in the administration and enforcement of the provisions of this Act and the said Department of Public Safety is hereby authorized to hire such agents, experts, and inspectors as it deems necessary to insure the adequate administration and enforcement of the provisions of this Act and said Department of Public Safety may and shall pay the salary of an Assistant Attorney General, to be appointed by the Attorney General of Texas, who shall give his full time to the administration and enforcement of the provisions of this Act.



**Penalties**

Sec. 23. Any person violating any provision of this Act shall, upon conviction, be punished by confinement in the penitentiary for not less than two (2) nor more than ten (10) years, and the benefits of the suspended sentence law shall not be available to a defendant convicted for violation of the provisions of this Act.

**Effect of acquittal or conviction under Federal Narcotic Laws**

Sec. 24. No person shall be prosecuted for a violation of any provision of this Act if such person has been acquitted or convicted under the Federal Narcotic Laws of the same act or omission which, it is alleged, constitutes a violation of this Act.

**Uncorroborated accomplice testimony**

Sec. 24 (a). Upon a trial for a violation of any of the provisions of this Act a conviction may be had upon the uncorroborated testimony of an accomplice. [As added Acts 1937, 45th Leg., 2nd C.S., p. 1970, ch. 58, § 2.]

Effective Oct. 26, 1937.

Section 3 of the amendatory act of 1937 the act should take effect from and after declared an emergency and provided that its passage.

**Constitutionality**

Sec. 25. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**Interpretation**

Sec. 26. This Act shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those States which enact it.

**Inconsistent laws repealed**

Sec. 27. All Acts or parts of Acts which are inconsistent with the provisions of this Act are hereby repealed. Chapter 35, Page 45, Acts of the Regular Session of the Twenty-ninth Legislature, 1905, as amended by Chapter 150, Page 277, Acts of the Regular Session of the Thirty-sixth Legislature, 1919, as amended by Chapter 61, Page 156, Acts of the Second Called Session of the Thirty-sixth Legislature, 1919;<sup>1</sup> Chapter 150, Page 277, Acts of the Regular Session of the Thirty-sixth Legislature, 1919,<sup>2</sup> Chapter 97, Page 154, Acts of Regular Session, Forty-second Legislature, 1931, as amended by Chapter 204, Page 609, Acts, Regular Session, Forty-third Legislature, 1933,<sup>3</sup> are hereby expressly repealed.

**Name of Act**

Sec. 28. This Act may be cited as the Uniform Narcotic Drug Act.

**Time of taking effect**

Sec. 29. This Act shall take effect and be in full force ninety (90) days after date of final adjournment. Acts 1937, 45th Leg., p. 333, ch. 169.

<sup>1</sup> Penal Code, arts. 720-722.

<sup>2</sup> Penal Code, arts. 723-725.

<sup>3</sup> Penal Code, art. 725a.

Effective 90 days after May 22, 1937, date of adjournment.

Section 30 of this Act declared an emergency, but section 29 makes the Act effective 90 days after date of final adjournment.

**Title of Act:**

An Act defining certain words and phrases as used herein; regulating and controlling the production, preparation, manufacture, possession, transportation, sale, disposition, and use of coca leaves, cocaine, opium, pyote, mescal beans, morphine, codeine, cannabis, heroin, and any compound, manufacture, salt, derivative, mixture, and preparation thereof, or of either of them; providing for licenses to persons manufacturing, compounding, mixing, cultivating, growing, or otherwise producing narcotic drugs and for wholesalers thereof; providing for an annual license fee; providing the Department of Public Safety may revoke license for cause; providing to whom manufacturer or wholesaler may sell narcotic drugs; official return and orders for such sales; when possession or control of narcotic drugs lawful; limitation on right of designated persons to administer narcotic drugs; providing for sales by apothecaries upon prescription; what prescription to state; preservation and nonrefilling of prescription; sale of stock by legal owner discontinuing dealing in narcotic drugs; sales by apothecaries of solutions containing narcotic drugs; providing for prescription for, or administering, narcotic drugs by physicians or dentists; what prescription to state; providing for return of unused drugs; prescription for, or administering, narcotic drugs by veterinarians; what prescription to state; providing to what acts or sales provisions of Act do not apply; to what conditions, exceptions subjected; when no limit on kind and quantity of narcotic drug prescribed or sold; providing for records to be kept by physicians, dentists, veterinarians, and other authorized persons, for records to be kept by manufacturers and wholesalers, for records to be kept by apothecaries, for records to be kept by vendors of exempted preparations; form of records prescribed by State Board of Pharmacy; what records to state; preservation thereof; record of narcotic drug laws destroyed or stolen; providing what labels to be affixed to narcotic drugs in packages and what said labels to state; what labels to be affixed to narcotic drugs sold by pharmacists on prescription and what said labels to state; when narcotic drugs to remain in container in which sold; providing to whom provisions of Act restricting possession and control of narcotic drugs do not apply; providing that any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or other place deemed a common nuisance for purposes of Act; providing that narcotic drugs manufactured, sold, or had in possession in violation of this Act are contraband and subject to seizure and

confiscation; providing for seizure of contraband narcotic drugs without warrants; providing for issuance of search warrants by magistrates upon proper information to search for and seize contraband narcotic drugs; providing for the forfeiture of and disposal of forfeited narcotic drugs; records to be kept for the Department of Public Safety; providing to whom copy of judgment and sentence, on conviction of violation of Act, to be sent; suspension or revocation by Court of license on conviction of defendant; reinstatement of license or registration; providing for inspection of prescriptions, orders, and records and stocks of narcotic drugs by officers charged with the duty of enforcing the provisions of this Act; when officer may divulge knowledge obtained by such inspection; prohibiting the obtaining of narcotic drugs by fraud, deceit, misrepresentation, or subterfuge, by forgery or alteration of prescription or written order, by concealment of material fact, by use of false name or false address; providing when communication to physician not privileged; prohibiting false statement in prescription order, report, or record; prohibiting the false assumption of title of manufacturer, wholesaler, apothecary, physician, dentist, veterinary, or other authorized person for the purpose of obtaining narcotic drugs; prohibiting the forgery of prescription or written order; providing that provisions of Section 20 apply to transactions under Section 8 hereof; providing that in any indictment, information, or complaint hereunder, it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this Act; placing burden of proof thereof upon defendant; providing who shall enforce the provisions of this Act and providing for their cooperation with agencies of other States and Federal Government, which agencies are charged with the enforcement of laws relating to narcotics; appropriating Twenty Thousand Dollars (\$20,000) out of the General Fund of this State to insure the adequate enforcement of the provisions of this Act; providing for the Department of Public Safety to pay the salary of an Assistant Attorney General specifically designated to help administer and enforce the provisions of this Act out of such appropriation; providing penalty for violation of Act; providing that suspended sentence law shall not be available to person convicted for violation of Act; providing that no prosecution for violation if previously acquitted or convicted of same violation under Federal Narcotic Act; providing that if any provision hereof is held to be invalid, other provisions will not be affected; providing for the rule of construction of this Act; repealing Chapter 35, Page 45, Acts of the Regular Session of the Twenty-ninth Legislature, 1905, as amended by Chapter 150, Page 277, Acts of the Regular Session of the Thirty-sixth Legislature, 1919, as amended by

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Chapter 61, Page 156, Acts of the Second Called Session of the Thirty-sixth Legislature, 1919; Chapter 150, Page 277, Acts of the Regular Session of the Thirty-sixth Legislature, 1919, Chapter 97, Page 154, Acts of Regular Session, Forty-second Legislature, 1931, as amended by Chapter 204,

Page 609, Acts, Regular Session, Forty-third Legislature, 1933, repealing all laws or parts of laws inconsistent herewith; providing how this Act shall be cited; providing when this Act shall take effect; and declaring an emergency. [Acts 1937, 45th Leg., p. 333, ch. 169.]

**Art. 726a.** Repealed by Acts 1937, 45th Leg., p. 554, ch. 274, § 1.

Effective May 5, 1937.

## CHAPTER FIVE.—OPTOMETRY

**Art.**

**738a.** Practice without license—fraud—practicing house to house or in streets prohibited [New].

**Art. 737.** Penalty

Whoever violates any provision of this Act shall be fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500), or be imprisoned in jail not less than two (2) nor more than six (6) months, or both. Each day of said violation shall be a separate offense. As amended Acts 1939, 46th Leg., p. 360, § 13.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17, of the amendatory Act of 1939, see article 4553 of the Civil Code.

**Art. 738a.** Practice without license—fraud—practicing house to house or in streets prohibited

It shall be unlawful for any person to:

(a) Falsely impersonate any person duly licensed as an optometrist under the provisions of this Act or to falsely assume another name;

(b) Buy, sell, or fraudulently obtain any optometry diploma, license, record of registration or aid or abet therein;

(c) Practice, offer, or hold himself out as authorized to practice optometry or use in connection with his name any designation tending to imply that he is a practitioner of optometry if not licensed to practice under the provisions of this Act;

(d) Practice optometry during the time his license shall be suspended or revoked;

(e) Practice optometry from house to house or on the streets or highways notwithstanding any laws for the licensing of peddlers. This shall not be construed as prohibiting an optometrist or physician from attending, prescribing for and furnishing spectacles, eyeglasses or ophthalmic lenses to a person who is confined to his abode by reason of illness or physical or mental infirmity, or in response to an unsolicited request or call, for such professional services. Added Acts 1939, 46th Leg., p. 360, § 12.

Effective 90 days after June 21, 1939, date of adjournment.

For sections 7, 11, 14, 15, and 17 of the Act of 1939, see article 4553 of the Civil Code.

## CHAPTER SIX—MEDICINE

**Art. 740.** 754 Exceptions

Nothing in this Chapter shall be so construed as to discriminate against any particular school or system of medical practice, nor to af-

fect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members. The provisions of this Chapter do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by statute; nor to nurses, who practice nursing only; nor to duly licensed chiropractors, who confine their practice strictly to chiropody as defined by statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract surgeons of the United States Army, Navy, or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of other States called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining, or treating patients. This law shall be so construed as to apply to persons other than registered pharmacists of this State not pretending to be physicians who offer for sale on the streets or other public places contraceptives, prophylactics or remedies which they recommend for the cure of disease. As amended Acts 1939, 46th Leg., p. 352, § 9.

Effective March 14, 1939.

Rev.Civ.St. art. 4500. Section 10 amended art. 740.

For sections 2-8, 11-13 of the amendatory Act of 1939, see notes under Vernon's

#### Art. 742. Unlawfully practicing medicine; penalty

Any person practicing medicine in this State in violation of the preceding Articles of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), and by imprisonment in the county jail for not more than thirty (30) days. Each day of such violation shall be a separate offense. As amended Acts 1939, 46th Leg., p. 352, § 10.

Effective March 14, 1939.

Rev.Civ.St. art. 4500. Section 9 amended art. 740.

For sections 2-8, 11-13 of the amendatory Act of 1939 see notes under Vernon's

### CHAPTER SEVEN—DENTISTRY

Art.

752b. Unprofessional conduct [New].

Art.

752c. Licenses, refusing, revoking, cancelling, and suspending of [New].

#### Art. 752. Use of own proper name instead of corporate or trade name; practice as partnership

It shall be unlawful for any person or persons to practice dentistry in this State under the name of a corporation, company, association, or trade name; or under any name except his own proper name, which shall be the name used in his license as issued by the State Board of Dental Examiners. It shall be unlawful for any person or persons to operate, manage, or be employed in any room, rooms, office, or offices where dental service is rendered or contracted for under the name of a corporation, company, association, or trade name, or in any other name than that

of the legally qualified dentist or dentists actually engaged in the practice of dentistry in such room, rooms, office, or offices; provided, however, this shall not prevent two or more legally qualified dentists from practicing dentistry in the same offices as a firm, partnership, or as associates in their own names as stated in licenses issued to them. Provided, however, that any dentist practicing under his own license may be employed by any person, firm or partnership practicing dentistry under licenses issued to them. Each day of violation of this Article shall constitute a separate offense. [As amended Acts 1937, 45th Leg., p. 1846, ch. 501, § 1.]

Effective January 1, 1938.  
Section 11 of the amendatory Act of  
1937 declared an emergency and provided

that the Act should take effect from and  
after its passage.

#### Art. 752b. Unprofessional conduct

It shall be unlawful for any person, firm, or corporation to engage in or be guilty of any unprofessional conduct in the practice of dentistry, directly or indirectly. Any "unprofessional conduct," as used herein, means and includes any one or more of the following acts, to wit:

(a) employing "Cappers" or "Steerers" to solicit and/or obtain business;

(b) obtaining any fee by fraud or misrepresentation;

(c) employing directly or indirectly or permitting any unlicensed person to perform dental services upon any person in any room or office under his or her control;

(d) circulate any statements as to the skill or method of practicing dentistry of any person through the means of bills, posters, circulars, cards, stereopticon slides, motion pictures, radios, newspapers, or other advertising agencies or devices;

(e) making use of any advertising statements of a character tending to mislead or deceive the public;

(f) advertising professional superiority or the performance of professional services in a superior manner;

(g) advertising prices for professional services in the practice of dentistry, or comparative values thereof;

(h) advertising bargains, cut rates, or special values in dental services or productions with or without specifying the time they shall apply;

(i) advertising any free dental work or free examination;

(j) advertising to guarantee any dental services;

(k) advertising to perform any dental operation painlessly;

(l) publishing or circulating reports of cases or statements of patients in any newspaper, or to circulate same in any other way whatsoever;

(m) advertising by any means, the using of any secret anesthetic, drug, formula, medicine, method, or system;

(n) employing any person or persons to obtain, contract for, sell or solicit patronage, or making use of free publicity press agents;

(o) advertising by means of large display signs, or glaring light signs, electric or neon, or such signs containing as a part thereof the representation of a tooth, teeth, bridgework, plates of teeth or any portion of the human head, or using specimens of such in display, directing the attention of the public to any such person or persons engaged in the practice of dentistry;

(p) advertising dental plates, or restorations, or the materials used in their construction, under any fictitious, fancy, or unscientific names un-

approved by the dental profession, or manufacturers of such materials and which cannot be identified by the patient;

(q) advertising to the public any commercial dental laboratory or dental clinic;

(r) giving a public demonstration of skill or methods of practicing dentistry for the purpose of securing patronage;

(s) forging, altering, or changing any diploma, license, registration certificate, transcript, or any other legal document pertaining to the practice of dentistry, being a party thereto, or beneficiary therein, or making any false statement about or in securing such document, or being guilty of misusing the same;

(t) using any photostat, copy, transcript, or any other representation in lieu of a diploma, license, or registration certificate as evidence of authority to practice dentistry.

Provided, that any duly licensed practitioner of dentistry may publicly announce by way of newspaper or professional card that he is engaged in the practice of dentistry, giving his name, degree, office location where he is actually engaged in practice, office hours, telephone numbers and residence address; and if he limits his practice to a specialty, he may state same. As added Acts 1937, 45th Leg., p. 1346, ch. 501, § 2.

Effective January 1, 1938.

Section 2 of the Act of 1937, cited to the text, purports to amend "Chapter 7, Title 12 of the Penal Code of 1925, as amended by Section 16, Chapter 244, page 606 of the Acts of the Regular Session of the Forty-fourth Legislature" by adding "thereto immediately after Article 752 a

new Article to be entitled 752a." As such section 16 of the 44th Leg. purported to amend. ch. 7 of title 12 by adding a new article to be known as art. 752a, which appears as art. 752a of this title, the new article added by the Act of 1937, cited to the text, appears as art. 752b of this title.

#### Art. 752c. Licenses, refusing, revoking, cancelling, and suspending of

Sec. 3. The State Board of Dental Examiners shall be and they are hereby authorized to refuse to grant a license to practice dentistry to any person or persons who have been guilty, in the opinion of said Board, of violating any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry, or any provisions of Chapter 7 of Title 12 of the Penal Code of the State of Texas,<sup>1</sup> within twelve (12) months prior to the filing of an application for such license.

#### Revocation, cancellation, or suspension of license

Sec. 4. The State Board of Dental Examiners shall be, and it shall be their duty, and they are hereby authorized to revoke, cancel or suspend any license or licenses that may have been issued by such Board, if in the opinion of a majority of such Board, any person or persons to whom a license has been issued by said Board to practice dentistry in this State, shall have, after the issuance of such license, violated any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry in this State, or any of the provisions of Chapter 7, Title 12 of the Penal Code of the State of Texas, or any amendments that may hereafter be made thereto. Provided, however, that if a majority of such Board shall be of the opinion that any person or persons to whom a license has been issued by said Board shall have violated any of the provisions of said Statutes or Penal Code, such Board shall first have an order entered in the Records of said Board declaring it to be the opinion of the majority of such Board that such person or persons have so violated the provisions of said Statutes or Penal Code, within twelve (12) months prior to the date of such order, and shall mail by registered mail to the last known address of such person or persons a copy of such order, together with

notice that if such alleged violations of said Statutes and Penal Code are not discontinued by such person or persons within ten (10) days after the mailing of such notice, or satisfactory evidence produced showing such alleged violations did not occur, that such Board will proceed to revoke, cancel or suspend the license of such person or persons alleged to have violated said Statutes and Penal Code. Such order and such notice shall state the alleged violations of such Statutes and Penal Code as are to be relied upon by said Board as grounds for the cancellation of such license. If, from and after ten (10) days from the mailing of such notice, the person or persons to whom such notice or notices have been sent shall in the opinion of said Board have failed and refused to desist from the violation complained of and set out in said order and said notice, or failed to show satisfactory evidence that such violations did not occur, said Board shall proceed to set a time and place, not less than ten (10) nor more than thirty (30) days, for a hearing to consider the revocation, cancellation or suspension of such license or licenses; and a copy of such order shall be sent by registered mail to the person or persons alleged to have violated the provisions of said Statutes and Penal Code, not less than five (5) days prior to the date set for the hearing thereon. Such order and such notice shall likewise state the grounds alleged to have been violated, as provided in the first order herein. At the time and date set in said order and said notice for such hearing, the person or persons alleged to have violated the provisions of the Statutes of the State of Texas relating to dentistry, or the provisions of said Chapter 7, of Title 12 of the Penal Code, may appear before said Board and show cause, if any he has, why said license should not be revoked, cancelled, or suspended. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board. After such hearing, the Board shall enter an order in its minutes dismissing such charges or revoking, cancelling or suspending for a time to be fixed by the Board, not to exceed twelve (12) months, the license or licenses of the person or persons accused, as in the opinion of the Board the facts brought out at such hearing justify and require. Provided, however, that any order cancelling or revoking or suspending such license or licenses shall be signed by a majority of such Board and by all the members of such Board present at such hearing. Provided that when the license of such licensee is revoked or cancelled he shall be allowed to continue the practice of his profession pending appeal upon his giving a supersedeas bond in such amount as shall be set by the District Court, conditioned to faithfully observe the law.

#### Appeal to court

Sec. 5. If said Board shall make and enter any order cancelling or suspending any license or licenses as hereinabove provided, the person or persons whose license shall have been so cancelled and revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the county in which the alleged offense occurred by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the State Board of Dental Examiners, as defendant. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases,

proceed to set such cause for hearing as in other civil cases. Upon the hearing of such cause, if such Court shall find that the action of such Board, in cancelling or revoking or suspending such license or licenses is not well taken or that same would or might deprive such licensee unjustly of his license to practice dentistry in this State, such Court shall by appropriate order and judgment set aside such action of said Board; but if such Court shall sustain such action of said Board in cancelling and revoking or suspending such license or licenses, an order shall be made and entered in appropriate form sustaining and affirming the action of such Board, from which order an appeal may be taken to the Court of Civil Appeals, as in other civil causes. If no appeal be taken from such order of such Court within thirty (30) days, the same shall become final. If an appeal be taken from the District Court to a Court of Civil Appeals, the order of such Court shall become final within thirty (30) days after the making and entry of such order by such Court of Appeals. Provided in all such cases of appeal that the Court shall give preference to same, and advance them on the docket of said Court so that speedy action may be had; providing also that trial in the District Court shall be de novo.

#### Additional offices

Sec. 6. This Act shall not be intended to prohibit any duly authorized, licensed and registered dentist from maintaining one additional office in any town or city other than the town of his residence.

#### Penalty

Sec. 7. If any person or persons shall practice or offer to practice dentistry in this State, or hold himself out as practicing dentistry in this State after such order revoking or cancelling his license to practice dentistry shall have become final, as herein provided, or during the period of the suspension of such license after such suspension has become final, he shall be punished by fine in any sum not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

#### Provisions cumulative; conflicting laws repealed

Sec. 8. This Act shall be cumulative of all laws now in effect providing for the revoking, cancelling or suspending of licenses for the practice of dentistry or dental surgery in this State, except in so far as the provisions hereof may conflict with other laws now in effect. And all laws or parts of laws in conflict herewith are hereby repealed. [Acts 1937, 45th Leg., p. 1346, ch. 501.]

<sup>1</sup> Penal Code, articles 747 to 751a.

Effective January 1, 1938.

Section 1 of this Act amended Article 752 of the Penal Code, and Section 2 added a new article, set out as Article 752b of the Penal Code.

Section 9 of the amendatory Act of 1937 reads as follows: "If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining por-

tions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional."

Section 10 makes the Act effective January 1, 1938. Section 11 declared an emergency and provided that the Act should take effect from and after its passage.



## CHAPTER ELEVEN—MISCELLANEOUS

Art. 778a. Name under which one may practice chiropragy [New].	Art. 782a. Industrial homework — definitions [New].
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### Art. 778. Chiropragy

Chiropragy means the diagnosis, medical and surgical treatment of ailments of the human foot. A chiropragist is one practicing chiropragy. Whoever professes to be a chiropragist or practices or assumes the duties incident to chiropragy, without first obtaining from the State Board of Chiropragy Examiners a license authorizing the practice of chiropragy, or who shall employ or agree to employ, pay or promise to pay, any person, persons, firms, partnerships or corporations for securing, soliciting or drumming patients, and any person who accepts or agrees to accept employment or payment for securing, soliciting or drumming patients for a chiropragist shall be punished by a fine of not less than One Hundred Dollars (\$100), nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment for each offense. Each payment, reward, fee or agreement to pay, or accepting a reward or fee, shall constitute a separate offense. As amended Acts 1939, 46th Leg., p. 368, § 6.

Effective July 11, 1939.

For sections 8-10 of the amendatory act of 1939, see Vernon's Rev.Civ.St. art. 4568.

### Art. 778a. Name under which one may practice chiropragy

It shall be unlawful for any person or persons to practice chiropragy in this State under the name of a corporation, company, association, joint stock company or partnership, or trade name, or under any name other than his own proper name, which shall be the name in his license, as issued by the State Board of Chiropragy Examiners. Each day of violation of the Article shall constitute a separate offense. Added Acts 1939, 46th Leg., p. 368, § 7.

Effective July 11, 1939.

For sections 8-10 of the act of 1939 see Vernon's Rev.Civ.St. art. 4568.

### Art. 782a. Industrial homework—definitions

Section 1. Whenever used in this Act:

“To manufacture” includes to prepare, alter, repair, or finish in whole or in part for profit and compensation.

“Person” includes a corporation, copartnership, or a joint association.

“Employer” means any person who, directly or indirectly or through an employee, agent, independent contractor, or any other person, delivers to another person any materials or articles to be manufactured in a home and thereafter to be returned to him, not for the personal use of himself or of a member of his family.

“Home” means any room, house, apartment, or other premises, whichever is most extensive, used in whole or in part as a place of dwelling.

“Industrial homework” means any manufacture in a home of materials or articles for an employer.

“Board” means the State Board of Health.

**Prohibited homework**

Sec. 2. No permit or certificate shall be issued under this Act to authorize the manufacture or the delivery of materials for the manufacture of articles, the manufacture of which by industrial homework is determined by the Board to be injurious to the health or welfare of the industrial homeworkers within the industry, or to the general public, or to render unduly difficult the maintenance of existing health standards or the enforcement of health standards established by law or regulation for factory workers in the industry.

**Power to prohibit**

Sec. 3. The State Board shall have the power to make an investigation of any industry which employs industrial homeworkers, in order to determine if conditions of employment of industrial homeworkers in such industry are injurious to their health and welfare. If, on the basis of information in its possession, after an investigation, as provided in this Section, the Board shall find that industrial homework cannot be continued within an industry without injuring the health and welfare of the industrial homeworkers within that industry, or the general public, the Board of Health shall by order declare such industrial homework unlawful as provided in Section 2 and require all employers in such industry to discontinue the furnishing within this State of material for industrial homework, and no permit issued under this Act shall be deemed thereafter to authorize the furnishing of materials for industrial homework prohibited by such order.

**Procedure**

Sec. 4. Before making such order the Board shall hold a public hearing or hearings at which an opportunity to be heard shall be afforded to any employer, or representative of employers, and any industrial homemaker or representative of industrial homeworkers, and any other person or persons having an interest in the subject matter of hearing. A public notice of such hearing shall be given at least thirty (30) days before the hearing is held and in such manner as may be determined by the Board. Such hearing or hearings shall be in such place or places as the Board deems most convenient to the employer and industrial homeworkers to be affected by such order. The Board shall determine the effective date of such order, which date shall be not less than ninety (90) days after the date of its promulgation.

**Employer's permit**

Sec. 5. No materials for manufacture by industrial homework shall be delivered to any person in this State unless the employer so delivering them or his agent, if the employer is not a resident of this State, has obtained a valid employer's permit from the Board. Such permit shall be issued upon payment of a fee of Fifty Dollars (\$50), and shall be valid for a period of one year from the date of its issuance, unless sooner revoked or suspended. Application for such permit shall be made in such form as the Board may by regulation prescribe. No employer shall deliver or cause to be delivered any materials or articles for manufacture by industrial homework to a person who is not in possession of a valid employer's permit or homemaker's certificate, issued in accordance with this Act. The Board may revoke or suspend any employer's permit if it finds that the employer has violated this Act or has failed to observe or comply with any provision of his permit.

**Homeworker's certificate**

Sec. 6. No person shall engage in industrial homework within this State unless he has in his possession a valid homeworker's certificate issued to him by the Board. Such certificate shall be issued upon the payment of a fee not to exceed Fifty (50) Cents and after the person applying for such certificate shall present and furnish a health certificate or other evidence showing good health as may be required by the Board and shall be valid for a period of one year from the date of its issuance, unless sooner revoked or suspended. Application for such certificate shall be made in such form as the Board may by regulation prescribe. Such certificate shall be valid only for work performed by the applicant himself in his own home. No homeworker's certificate shall be issued to any person under the age of fifteen (15) years or to any person suffering from an infectious, contagious, or communicable disease, or living in a home that is not clean, sanitary, and free from infectious, contagious, or communicable disease. The Board may revoke or suspend any homeworker's certificate if it finds that the industrial homeworker is performing industrial homework contrary to the conditions under which the certificate was issued or in violation of this Act or has permitted any person not holding a valid homeworker's certificate to assist him in performing his industrial homework.

**Labels required**

Sec. 7. No employer shall deliver or cause to be delivered to any person any materials or articles to be manufactured by industrial homework unless there has been conspicuously affixed to each article or, if this is impossible, to the package or other container in which such goods are delivered or are to be kept, a label or other trade-mark of identification bearing the employer's name and address, printed or written legibly in English.

**Unlawfully manufactured articles**

Sec. 8. Any article which is being manufactured in a home in violation of any provision of this Act may be removed by the Board and may be retained until claimed by the employer. The Board shall by registered mail give notice of such removal to the person whose name and address are affixed to the article as provided in Section 7. Unless the Article so removed is claimed within thirty (30) days thereafter, it may be destroyed or otherwise disposed of.

**Records to be kept**

Sec. 9. No person having an employer's permit shall deliver or cause to be delivered or received any article for, or as a result of, industrial homework unless he shall keep in such form and forward to the Board at such intervals as it may by regulation prescribe, and on such blanks as it may provide, a record of all persons engaged in industrial homework on materials furnished or distributed by him, of all places where such persons work, of all articles which such persons have manufactured, of all agents or contractors to whom he had furnished materials to be manufactured by industrial homework, and of all persons from whom he has received materials to be so manufactured. This information and record shall be for the sole benefit of aiding the Board to enforce the provisions of this Act and shall not be for publication and shall not be divulged except to authorized representatives of the Board in the enforcement of this Act.

**Enforcement**

Sec. 10. The Board shall have the power and it shall be its duty to enforce the provisions of this Act. The Board and authorized represen-

tatives of the Board are authorized and directed to make all inspections and investigations necessary for the enforcement of this Act. Rules and regulations necessary to carry out the provisions of this Act shall be made by the Board and violation of any such rule or regulation shall be deemed a violation of this Act.

#### Oaths and affidavits; hearings and subpoenas

Sec. 11. In matters relating to this Act, the Board or its duly authorized representative may administer oaths, take affidavits, and issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents, and other evidence of whatever description; may hear testimony under oath and take or cause to be taken depositions of witnesses residing within or without this State in the manner prescribed by law for like depositions in civil actions in the Justice of the Peace Court. Subpoenas and commissions to take testimony shall be issued under seal of the Board of Health.

#### Penalties

Sec. 12. In addition to any penalties otherwise prescribed in this Act, any employer who delivers or causes to be delivered to another person any materials for manufacture by industrial homework without having in his possession a valid employer's permit as required by Section 5 of this Act, or any employer who refuses to allow the Board or its authorized representative to enter his place of business for the purpose of making investigations authorized by this Act or necessary to carry out its provisions, or who refuses to permit the Board or its authorized representative to inspect or copy any of his records or other documents relating to the enforcement of this Act, or who falsifies such records or documents or any statement which he is required by the commissioner acting under authority of this Act to make, or any employer who otherwise violates this Act or any provision of his permit, shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) or by imprisonment for not less than thirty (30) nor more than sixty (60) days or by both such fine and imprisonment. [Acts 1937, 45th Leg., p. 1292, ch. 481.]

Effective June 9, 1936.

Section 13 provided as follows: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

Section 14 declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act regulating industrial homework; defining certain terms; prohibiting certain forms of industrial homework; empowering the Board of Health to enforce the provisions of this Act; prescribing the procedure to be used by the Board of Health; requiring an employer's permit for indus-

trial homework and providing a license fee therefor; requiring a certificate for any person who shall engage in industrial homework; requiring all materials or articles manufactured by industrial homework to be labeled with the employer's name and address; providing that articles unlawfully manufactured by homework may be seized by the Board of Health; requiring an employer to keep records of industrial homework; making it the duty of the Board of Health to enforce the provisions of this Act; authorizing the Board of Health or its authorized representatives to administer oaths and take affidavits; providing a penalty; providing if any part of the Act is declared invalid the remainder of the Act shall not be affected; and declaring an emergency. [Acts 1937, 45th Leg., p. 1292; ch. 481.]

## TITLE 13—OFFENSES AGAINST PUBLIC PROPERTY

## CHAPTER ONE—HIGHWAYS AND VEHICLES

Art.

784a—1. Fishing from, or leaving dead fish, crabs, or bait upon, road surface or bridge [New].

784a—2. Penalty [New].

784a—3. Posting of signs [New].

Art.

827aa. County Highway Patrolmen authorized in certain counties [New].

827e. Traffic signals on State Highways outside cities and towns [New].

Art. 784a—1. Fishing from, or leaving dead fish, crabs, or bait upon, road surface or bridge

From and after the effective date of this Act it shall be unlawful for any person to engage in fishing from, or to deposit or leave any dead fish, crabs, or bait upon, the road surface or deck of any causeway, or bridge located on any highway which is being maintained by the State Highway Department. Provided that it shall be legal to fish from any section of such structure other than the deck or road surface. Acts 1939, 46th Leg., Spec.L., p. 884, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 4 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act making it unlawful for any person to engage in fishing from, or to deposit or leave any dead fish, crabs, or bait upon the road surface or deck of any causeway or

bridge, located on any highway being maintained by the State Highway Department; providing certain exceptions; instructing the Highway Department to post signs on all structures affected by the Act; making the violation of this Act a misdemeanor and providing a penalty for violation; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 884.

Art. 784a—2. Penalty

Any person who shall violate the terms of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Dollar (\$1) nor more than Fifty Dollars (\$50). Acts 1939, 46th Leg., Spec.L., p. 884, § 2.

Effective 90 days after June 21, 1939, date of adjournment.

Art. 784a—3. Posting of signs

The State Highway Commission, through and by its authorized agents or representatives, is hereby instructed to post signs on every causeway, bridge, or structure affected by this Act. Acts 1939, 46th Leg., Spec.L., p. 884, § 3.

Effective 90 days after June 21, 1939, date of adjournment.

Art. 802. Driver intoxicated or under influence of intoxicating liquor

Any person who drives or operates an automobile or any other motor vehicle upon any street or alley, or any other place within the limits of any incorporated city, town, or village, or upon any public road or highway in this State while such person is intoxicated, or in any degree under the influence of intoxicating liquor, shall upon conviction be con-

ined in the penitentiary for not more than two (2) years, or be confined in the county jail for not less than five (5) days nor more than ninety (90) days and fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500). [As amended Acts 1937, 45th Leg., p. 108, ch. 60, § 1.]

Effective March 22, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

#### Art. 827aa. County Highway Patrolmen authorized in certain counties

The Commissioners' Courts of Counties containing not less than eleven thousand nine hundred eighty (11,980) inhabitants, and not more than twelve thousand one hundred (12,100) inhabitants, according to the last preceding Federal Census shall from and after the passage of this Act be empowered to appoint not more than five (5) County Highway Patrolmen for such County, which appointment for Highway Patrolmen shall be limited to the Sheriff or any of his duly appointed Deputies, and any Constable or his duly appointed Deputies, whose duty it shall be to patrol all County Public Roads for the purpose of enforcing the Highway laws of this State, regulating the use of public Highways by motor vehicles. Said County Highway Patrolmen shall have authority to weigh all motor vehicles, if said officer has reasons to believe that the gross weight of any loaded motor vehicle is unlawful and said officer shall have the authority to require such motor vehicle to be driven to the nearest scale, provided however, that such scale is not more than two (2) miles distant and said officer shall have authority to cause said motor vehicle to be unloaded to the extent that the gross weight of such motor vehicle shall not exceed the maximum allowed under the laws of the State of Texas.

Said County Highway Patrolmen may as such be dismissed by said Commissioners' Courts on their own initiative, whenever their services are no longer needed or have proven unsatisfactory, and said County Highway Patrolmen shall as such, receive no compensation from the Commissioners' Court. Acts 1937, 45th Leg., p. 830, ch. 407, § 1.

Effective May 28, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

##### Title of Act:

An Act authorizing the appointment of County Highway Patrolmen by the Com-

missioners' Courts of Counties containing not less than eleven thousand nine hundred eighty (11,980) inhabitants, and not more than twelve thousand one hundred (12,100) inhabitants, according to the last preceding Federal Census; and declaring an emergency. [Acts 1937, 45th Leg., p. 830, ch. 407.]

#### Art. 827e. Traffic signals on State Highways outside cities and towns

Section 1. There may be installed at such points on State Highways as may be approved and directed by the State Highway Engineer of the State of Texas, signal units to be used as a means of controlling and regulating traffic, both vehicular and pedestrian, by the use of lights placed in such units. Such lights shall consist of red lights, amber (yellow) lights and green lights. Said signal unit shall be suspended above the center of said State Highways and installed under the direction of the State Highway Engineer, or any resident engineer of the State Highway Department.

At the display of the red light all traffic approaching such displayed light shall come to a complete stop; at the display of the amber (yellow)

light, traffic shall prepare to move forward, and at the display of the green light traffic shall proceed to move forward.

Sec. 2. Any person who shall fail to stop after approaching a signal unit which has been installed and is being operated when the red light signal or the amber (yellow) signal is displayed on the side of such signal toward which he is approaching, shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine in any sum not to exceed Two Hundred (\$200.00) Dollars.

Sec. 3. It shall not be necessary for the State to prove the installation of such signal units, or the approval and direction of the State Highway Engineer, but any person charged with a violation of this Act shall have the right to prove same was not so approved and installed as a defense.

Sec. 4. This Act shall not apply to, or be construed as in conflict with any city ordinance of any incorporated city or town within this State, but shall be construed as applying only to points on State Highways outside the limits of incorporated cities and towns. [Acts 1937, 45th Leg., p. 57, ch. 35.]

Effective March 11, 1937.

Section 5 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the installation of

signal units on State Highways outside of incorporated cities and towns, regulating the crossing of such highways at places where such units are installed by vehicles and pedestrians, fixing a penalty and declaring an emergency. [Acts 1937, 45th Leg., p. 57, ch. 35.]

## CHAPTER SIX—GAME, FISH AND OYSTERS

**Art.**

- 879a—4. Open season for mourning doves and white-winged doves [New].
- 879f—4. Closed season for prairie chicken [New].
- 879g—2. Collared Peccary, or Javelina protected; open season [New].
- 879g—3. Penalty [New].
- 923b—1. Brown pelican; permit to kill required [New].
- 923qa. License to trap fur bearing animals or traffic in pelts required—definitions [New].

**Art.**

- 934b—1. Nonresident commercial fisherman; license; definitions [New].
- 941—1. Set, drag, seine or net for fish or shrimp in Matagorda Bay east of Colorado River [New].
- 978l—1. Sale of fresh water fish taken from counties west of Pecos River [New].
- 978m. Coastal Division of Game, Fish and Oyster Commission created [New].

### Art. 875. Exemptions

English sparrows, crows, ravens, vultures or buzzards, "rice birds" identified as harmful, black birds, pelicans, road runners and the goshawk, the Cooper's hawk or blue darter, the sharp-shinned hawk, the duck hawk, jay bird, sapsuckers, woodpeckers, butcher birds or shrike, the great horned owl and the starling are not included among the birds protected by this Chapter; and providing, further, that nothing in this Section shall prevent the purchase and sale of canaries and parrots, or the keeping of same in cages as domestic pets. As amended Acts 1939, 46th Leg., Spec.L., p. 827, § 1.

Effective May 8, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

### Art. 879a—4. Open season for mourning doves and white-winged doves

Section 1. The open season for taking mourning doves and white-winged doves in this State shall be as follows: In Yoakum, Terry, Lynn, Garza, Kent, Stonewall, King, Cottle, and Childress Counties and in all counties north and west thereof, and in the counties of Cooke, Grayson

and Fannin, Hardeman, Foard, Knox, Wilbarger, Baylor, Wichita, Archer, Young and Clay, during the period September 1st to October 31st. In the remainder of the State the open season shall be during the period September 15th to November 15th except that in that portion of the State lying south of the south right of way line of the Texas-Mexican railroad which runs from Laredo to Corpus Christi (but this exception shall not apply in Webb and Zapata Counties) it shall be lawful to hunt, take, or kill mourning doves or white-winged doves only on each Sunday, Tuesday, Thursday and Saturday from September 15th to November 15th of each year, and on no other days.

#### Bag limit and possession limit

Sec. 2. It shall be unlawful for any person to take more than fifteen (15) mourning doves or more than fifteen (15) white-winged doves or an aggregate of more than fifteen (15) of both species during any one day, and it shall be unlawful for any person to have in possession at any one time more than one day's limit of such birds.

#### Hours for shooting

Sec. 3. It shall be unlawful to hunt mourning doves or white-winged doves during the open season provided for hunting same, except during the hours from 7:00 a. m. to sunset.

#### Regulations as to shot guns used for shooting migratory and other game birds

Sec. 4. It shall be unlawful to hunt or shoot mourning doves, white-winged doves, or any migratory bird, or any other game bird of this State with a shotgun larger than ten-gauge and that is capable of holding more than three (3) shells at one loading, including the shell that may be held in the chamber of such gun, and providing that if a magazine-loading gun is used and the magazine of such gun would otherwise hold more than two (2) shells, before such gun is used it shall be permanently plugged so that such magazine will be rendered incapable of holding more than two (2) shells.

#### Penalty

Sec. 5. Any person who takes or attempts to take any mourning dove or white-winged dove at any time other than the open season provided in this Act for taking same, or any person who otherwise violates any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50) and each bird taken or possessed in violation of any provision of this Act shall constitute a separate offense. [Acts 1937, 45th Leg., 2nd C.S., p. 1887, ch. 17.]

Effective Oct. 12, 1937.

Sec. 6 of this Act provided that: "All laws or parts of laws of this State in conflict with any provision of this Act, and specifically all of the laws of this State fixing an open season for taking mourning doves or white-winged doves and bag limits or possession limits for taking same, be and the same are hereby repealed to the extent of such conflict only."

Section 7 declared an emergency and provided that the Act should take effect from and after its passage.

For similar act, applicable to Collin, Dallas, Delta, Denton, Franklin, Haskell, Hopkins, Jack, Johnson, Kaufman, Montague, Parker, Rockwall, and Wise Counties, only, see Acts 1937, 45th Leg., 2nd C.S., p.

2006, ch. 73, Vernon's Rev.Pen.Code art. 978j notes.

#### Title of Act:

An Act providing the time when mourning doves and white-winged doves may be shot in this State; making certain exceptions; fixing the bag limit and possession limit of same; fixing the hours for shooting and making regulations for shotguns that may be used for shooting migratory birds and other game birds; providing a penalty for the violation of any such regulations; repealing all laws in conflict with any section of this Act; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1887, ch. 17.]



## Art. 879f—4. Closed season for prairie chicken

Section 1. It shall be unlawful to take, hunt, trap, shoot, or kill any prairie chicken in the State of Texas for a period of five (5) years from and after the effective date of this Act.

Sec. 2. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200).

Sec. 3. The provisions of this law shall be accumulative of all general laws on the subject not in actual conflict herewith, and all laws and parts of laws in conflict herewith are hereby repealed in so far as such laws are in actual conflict with the provisions of this Act in its local application, and in case of such conflict the provisions of this Act shall control and be effective. [Acts 1937, 45th Leg., 1st C.S., p. 1800, ch. 25.]

Effective 90 days after June 25, 1937, date of adjournment.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

## Title of Act:

An Act declaring it unlawful to take, hunt, trap, shoot, or kill any prairie chick-

en in the State of Texas for a period of five (5) years; prescribing penalty for violation of the provisions of this Act; making the Act accumulative; repealing all laws and parts of laws in conflict herewith; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1800, ch. 25.]

## Art. 879g. Wild buck deer and wild bear

There shall be an open season, or period of time, when it shall be lawful to hunt, take, or kill wild buck deer and wild bear, in both the North and South Zones, November 16th to December 31st of each year, both days inclusive; provided, however, it shall be unlawful for any person or persons to hunt, take, or kill wild deer for a period of five (5) years, from and after November 15, 1929, in any of the following Counties: Callahan, Eastland, Stephens, Palo Pinto, and Shackelford. That it shall not be unlawful to hunt, kill, or take wild bear within the territorial limits of Polk County, Texas. [As amended Acts 1937, 45th Leg., p. 878, ch. 433, § 1.]

Section 3 of the 1937 amendment makes the Act effective February 1, 1938.

Section 2 repeals all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

## Art. 879g—2. Collared Peccary or Javelina protected; open season

The Collared Peccary, commonly called Javelina, is hereby declared to be a game animal and it shall be unlawful for anyone to take, attempt to take, capture, shoot, or kill, any Collared Peccary or Javelina at any time except during the open season provided for taking same, which said open season shall be during the period November 16th to January 1st of each year, and it shall be unlawful at any time for any person to take any Collared Peccary or Javelina or to have any Collared Peccary or Javelina, or any part of the same, in possession for the purpose of barter or sale, or to sell or offer for sale any Collared Peccary or Javelina or any part of same, and it shall be unlawful for any person to take in any one season more than two (2) Collared Peccary or Javelina. Provided, however, that the provisions of this Act shall not apply to any Collared Peccary or Javelina or their hides heretofore or hereafter imported from another State or foreign country. Acts 1939, 46th Leg., Spec.L., p. 831, § 1, as amended Acts 1939, 46th Leg., Spec.L., p. 832, § 1.

Effective May 11 and June 13, 1939.

Section 2 of amendatory Act of 1939 declared an emergency and provided that the

Act should take effect from and after its passage.

## Title of Act:

An Act declaring the Collared Peccary or Javelina a game animal; providing an open season for taking same and the number that may be taken or possessed; prohibit-

ing the sale of any Peccary or part of such animal; providing a suitable penalty; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 831.

## Art. 879g—3. Penalty

Any person violating any provision of this Act<sup>1</sup> shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50) and each Collared Peccary or Javelina taken or possessed or offered for sale or possessed for the purpose of sale, or sold, in violation of this Act shall constitute a separate offense. Acts 1939, 46th Leg., Spec.L., p. 831, § 2.

<sup>1</sup> This article and art. 879g—2 ante.

Effective May 11, 1939.

## Art. 880. Hunting with dogs

It is hereby declared unlawful for any person or persons to make use of a dog or dogs in the hunting of or pursuing or taking of any deer. Any person or persons owning or controlling any dog or dogs, and who permits or allows such dog or dogs to run, trail, or pursue any deer at any time, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than Twenty-five Dollars (\$25), and not more than Two Hundred Dollars (\$200); provided, however, that this Article shall not apply to the Counties of Brazoria, Matagorda, Wharton, Jackson, and Fort Bend. And, provided further, that it shall be lawful to use one dog for the purpose of trailing a wounded deer in the Counties of Kimble, Sutton, Edwards, Medina, Dimmit, Uvalde, Zavala, Kerr, Mason, Gillespie, Tom Green, Shackelford, San Saba, Llano, Blanco, Burnet, Bandera, Comal, Real, Kendall, Wharton, Schleicher, Crockett, Guadalupe, Jackson, Wilson, Concho, Karnes, Jones, Atascosa, Baylor, Bexar, Brewster, Caldwell, Denton, DeWitt, Frio, Gonzales, Haskell, Hays, Hidalgo, Jack, Kaufman, and Cameron; and providing further, that it shall be lawful to use one dog for the purpose of hunting, pursuing, and taking of deer in Jefferson, Montgomery, and Orange Counties. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1947, ch. 47, § 1.]

Effective Oct. 25, 1935.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

Sec. 1A. It shall be lawful to use one dog for the purpose of hunting or pursuing or taking of any deer in the County of Tyler. [As added Acts 1937, 45th Leg., 2nd C.S., p. 1950, ch. 49, § 1.]

Effective Nov. 3, 1937.

Section 2 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

## Art. 923b—1. Brown pelican; permit to kill required

Section 1. From and after the passage of this Act it shall be unlawful to kill, take or attempt to take or kill any brown pelican in this State, unless permit is first obtained from the Game, Fish and Oyster Commission of the State of Texas.

Sec. 2. Any person violating this Act shall be deemed guilty of a misdemeanor and shall be fined in a sum not more than Ten (\$10.00) Dollars. Acts 1939, 46th Leg., Spec.L., p. 828.

Effective March 28, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that it shall be unlaw-

ful to take or kill a brown pelican; providing a suitable penalty and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 828.

## Art. 923qa. License to trap fur bearing animals or traffic in pelts required—definitions

Section 1. For the purpose of this Act the following words, terms, and phrases are hereby defined:

(a) "Wholesale Fur Buyer." A Wholesale Fur Buyer is any person who purchases for himself or on behalf of another person, the pelt or pelts of any of the fur-bearing animals of this State from a Retail Fur Buyer and/or from the Trapper.

(b) "Retail Fur Buyer." A Retail Fur Buyer is any person who purchases the pelt or pelts of any of the fur-bearing animals of this State from the Trapper only.

(c). Resident trapper; nonresident trapper. A trapper is any person who takes for the purpose of barter or sale, and who sells or offers for sale, the pelt or pelts of any of the fur-bearing animals of this State, and for the purpose of this Act, trappers are hereby divided into two (2) classes, namely "resident" and "nonresident." Resident trappers are those who have, for a period of twenty-four (24) months previous to their application for license, been bona fide residents of this State. All others are nonresident trappers. As amended Acts 1939, 46th Leg., p. 237, § 1.

Effective May 15, 1939.

(d) "Person," shall include the plural as well as the singular, as the case demands, and shall include individuals, partnerships, associations, and corporations.

**Licenses required; cost of license; expiration of license**

Sec. 2. Before any person shall operate in this State as a Wholesale Fur Buyer, Retail Fur Buyer, or Trapper, he shall be required to obtain and have in his possession a valid license entitling him to the privileges given in this Act and to no other privileges. Such license or licenses shall be obtained from the Game, Fish and Oyster Commission, or from one of their authorized agents.

(a) A Wholesale Fur Buyer's license may be purchased for the sum of Twenty-five Dollars (\$25) and shall entitle the holder to the privilege of purchasing the pelts of fur-bearing animals in this State from Trappers, Retail Fur Buyers, and Wholesale Fur Buyers, and the privilege of handling such pelts for shipment and sale.

(b) A Retail Fur Buyer's license may be purchased for the sum of Five Dollars (\$5) and shall entitle the holder to the privilege of purchasing the pelts of fur-bearing animals from the Trapper only and handling same for the purpose of shipment and sale.

(c). A resident trapper's license may be purchased for the sum of One Dollar (\$1), and a nonresident trapper's license may be purchased for the sum of Two Hundred Dollars (\$200), and the respective licenses shall entitle the holder to sell only his own catch of the pelts of fur-bearing animals of this State, which he has lawfully taken. As amended Acts 1939, 46th Leg., p. 237, § 2.

Effective May 15, 1939.

All licenses provided for in this Section shall be valid until August 31st following date of issuance.

**Moneys deposited to credit of special game fund**

Sec. 3. All moneys collected from the sale of licenses provided for under the provisions of this Act, after the fees for issuing same are

deducted, shall, before the 10th day of the month following the sale of such license, be remitted to the office of the Game, Fish and Oyster Commission at Austin, Texas, and shall be deposited in the State Treasury to the credit of the Special Game Fund and shall be used for any and all of the purposes provided by law. County Clerks and other authorized agents of the Game, Fish and Oyster Commission shall be entitled to a fee of Twenty (20) Cents for each license issued.

**Wholesale or retail fur buyers' licenses for each place of business; display of license; license on person; inspection of vehicles used**

Sec. 4. When a person, firm, or corporation operates as a Wholesale Fur Buyer or as a Retail Fur Buyer, a license shall be required for each place of business and be publicly displayed in said place of business at all times, and all such places of business shall be subject to inspection, without warrant, by any game and fish warden at any time. If a person operates as a Wholesale Fur Buyer, Retail Fur Buyer, or as a Trapper, other than at an establishment for which a license has been issued, he shall have on his person, whenever conducting such operations, the license required of him as a Wholesale Fur Buyer, Retail Fur Buyer, or Trapper, and any vehicle which he operates shall be subject to inspection, without warrant, by any game and fish warden at all times that such vehicle is being used for the collection of the pelts of fur-bearing animals or for the purpose of transporting same.

**Repeal of conflicting laws**

Section 5 of Acts 1937, 45th Leg., p. 596, ch. 299, purporting to repeal certain laws in conflict with that Act read as follows:

"Sec. 5. All laws or parts of laws, in so far as they conflict with any portion of this Act, and specifically that provision of law of this State requiring a tax tag to be attached to the pelt of each fur-bearing animal of this State before same is sold or

offered for sale,<sup>1</sup> and specifically the law of this State now in existence requiring a Trapper's license<sup>2</sup> and a Resident Fur Dealer's license<sup>3</sup> or a Nonresident Fur Dealer's license,<sup>4</sup> are hereby repealed."

<sup>1</sup> See art. 923q, §§ 4, 5.

<sup>2</sup> See art. 923q, § 2.

<sup>3</sup> See art. 923q, § 6.

<sup>4</sup> See art. 923q, § 6.

**Purchase of pelts from unlicensed person unlawful; operation as wholesaler, retailer, or trapper without license unlawful**

Sec. 6. It shall be unlawful for any Wholesale Fur Buyer or any Retail Fur Buyer to purchase the pelt of any fur-bearing animal of this State from any person unless such person holds a Trapper's license or a Wholesale Fur Buyer's license or a Retail Fur Buyer's license, and it shall be unlawful for any person to operate as a Wholesale Fur Buyer, Retail Fur Buyer, or Trapper, as defined in this Act, without first obtaining the license required for the business engaged in.

**Penalty; forfeiture of license**

Sec. 7. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and any person convicted under any provision of this Act shall automatically forfeit any license which he may hold under any provision of this Act and shall not be permitted to obtain any license provided for under this Act for a period of one year from date of his conviction. Acts 1937, 45th Leg., p. 596, ch. 299.

Effective 90 days after May 22, 1937, date of adjournment.

Section 8 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Section 3 of the amendatory act of 1939 repeals all laws and parts of laws.

Section 4 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act defining a "Wholesale Fur Buyer," a "Retail Fur Buyer," and a "Trapper"; providing licenses for those engaged in such business and defining the privileges granted under such licenses; providing expiration date shall be August 31st following date of issuance; providing for the disposition of funds collected from the sale of such licenses; repealing all laws in conflict with this Act, and specifically

that portion of the law of this State requiring a tax receipt tag to be attached to the pelts of fur-bearing animals; repealing the law now in existence requiring a Trapper's License and a Resident Fur Dealer's License or a Nonresident Fur Dealer's License; providing a suitable penalty for violation of any provision of this Act; and declaring an emergency. [Acts 1937, 45th Leg., p. 596, ch. 299.]

**Art. 923qa—4. Trapping fur bearing animals, exception of certain counties**

Sec. 6. Provided that it shall be unlawful for any person to kill, take, or have in his possession for barter or sale within Caldwell, Milam, or Lee Counties, for a period of ten (10) years after the passage of this Act, any wild beaver, wild otter, or wild fox, or the pelts thereof. [Acts 1931, 42nd Leg., p. 440, ch. 264, as substituted Acts 1937, 45th Leg., p. 860, ch. 425, § 1.]

Effective June 2, 1937.

Acts 1937, 45th Leg., p. 860, ch. 425, entitled: "An Act repealing Section 6, Article 923qa-4 of the Penal Code of Texas, so as to exempt Williamson County from a closed season of ten (10) years in the taking of wild beaver, wild otter, or wild fox, or the pelts thereof, and declaring an

emergency.", in section 1 repealed section 6 of Acts 1931, 42nd Leg., p. 440, ch. 264, and substituted in lieu thereof section 6 as set out in this Article.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 934b—1. Nonresident commercial fisherman; license; definitions**

Section 1. A "nonresident commercial fisherman" for the purpose of this Act is hereby defined as follows:

"Any person who is a citizen of any other State, or any person who has not continually been a bona fide resident of this State for a period of time more than twelve (12) months, and who takes, catches, or assists in taking or catching, fish or shrimp or oysters or any other edible aquatic life from the tidal salt waters of this State for pay or for the purpose of sale, barter, or exchange."

**License to fish required; amount of fee**

Sec. 2. Before any "nonresident commercial fisherman" shall take or assist in taking any fish or shrimp or oysters or any other edible aquatic life from the tidal salt waters of this State, a license, to be known as "Nonresident Commercial Fisherman's License," shall first be procured from the Game, Fish and Oyster Commission of Texas, or one of its authorized agents, privileging them so to do.

The fee for a Nonresident Commercial Fisherman's License shall be Two Hundred Dollars (\$200).

**Boundaries of commercial fishing region**

Sec. 3. The licensed commercial fishermen, resident or nonresident, may fish commercially in the coastal waters bounded on the east by a line drawn from the center of Sabine Pass, cutting across the East Sabine Jetty at a point two thousand (2,000) feet north of the present fishing pier known as the Jaycee Pier, and extending three (3) marine leagues into the Gulf of Mexico, following along the coast line of Texas to the present acknowledged boundary between the State of Texas and the Republic of Mexico.

**License required to bring aquatic products into state for sale**

Sec. 4. It shall be unlawful for any nonresident commercial fisherman to bring into this State any aquatic products on any boat and in this State sell, or offer the same for sale, without first having procured a "Nonresident Commercial Fisherman's License."

**Penalty**

Sec. 5. Any person failing to comply with, or who violates, any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500); and provided that the Game, Fish and Oyster Commission of Texas, or its authorized agent, shall have the power and right to seize and hold boats, nets, seines, trawls, or other tackle in his possession as evidence until after trial of the defendant and no suit shall be maintained against him therefor.

**Commission to keep boat to enforce act**

Sec. 6. The State Game, Fish and Oyster Commission shall keep and maintain a suitable boat for the purpose of enforcing the provisions of this Act and other fishing laws in the vicinity of Sabine Pass.

**Moneys to Fish and Oyster Fund**

Sec. 7. All moneys collected under provisions of this Act, or because of fines paid for violation of the provisions of this Act, shall be remitted to the Game, Fish and Oyster Commission of Texas at its office in Austin, Texas, not later than the tenth day of the month following their collection, and shall be deposited by said Game, Fish and Oyster Commission in the State Treasury to the credit of the Fish and Oyster Fund. Acts 1939, 46th Leg., p. 238.

Effective April 20, 1939.

Section 8 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act defining a "nonresident commercial fisherman"; providing for a nonresident commercial fishing license and the fee for same; specifying boundary lines within which commercial fishermen may fish;

providing a person must have a nonresident fishing license to bring aquatic products into this State on a boat and offer same for sale; providing a penalty for violation of the Act; providing for the seizure of boats and tackle for evidence; providing for maintenance of a boat to enforce the provisions of this Act; providing for disposition of funds collected under this Act; and declaring an emergency. Acts 1939, 46th Leg., p. 238.

**Art. 937a. Tax on fish, crabs, and shrimp; "barrel of oysters" tax**

Repealed by Acts 1939, 46th Leg., H.B. #744, § 3, in so far as applicable to the waters of Calhoun, Matagorda, and Jackson Counties.

**Art. 941—1. Set, drag, seine or net for fish or shrimp in Matagorda Bay east of Colorado River**

Section 1. It shall be unlawful for any person to place, set, drag, or use any seine, net, or other device for catching fish or shrimp other than the ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, or cast net with a spread not greater than nine (9) feet (nine (9) feet in diameter), or minnow seine of not more than twenty (20) feet in length for catching bait or have in his possession any net, seine, or trawl without a permit issued by the Game, Fish and Oyster Commission, in or on the waters of Matagorda Bay from the Colorado River to its eastmost end; providing that nothing in this Act shall prevent the use of spear or gig and light for the purpose of taking flounder.

Sec. 2. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and on first conviction shall be fined in a sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred and Fifty Dollars (\$250); and on second or more convictions shall be fined in a sum of not less than One Hundred Dollars (\$100) and not more than Two Hundred and Fifty Dollars (\$250), and his fisherman's license or dealer's license shall be automatically cancelled, and he shall not be entitled to receive another fisherman's license or dealer's license for one year from the date of his conviction; and provided that the Game, Fish and Oyster Commission of Texas shall have the power and right to seize and hold nets, seines, or other tackle in his possession as evidence until after the trial of defendant, and no suit shall be maintained against it therefor. Acts 1939, 46th Leg., Spec.L., p. 823.

Effective May 8, 1939.

Section 3 of the Act of 1939 repeals all conflicting laws and parts of laws. Section 4 declared an emergency and provided that the act should take effect from and after its passage.

**Title of Act:**

An Act so as to make it unlawful for any person to place, set, drag, or use any seine, net, or other device for taking fish and shrimp other than the ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, or cast net with a spread of not more than nine (9) feet, or a minnow seine of not more than twenty (20) feet in

length for catching bait or have in his possession any seine, net, or trawl without a permit issued by the Game, Fish and Oyster Commission, in or on the waters of Matagorda Bay east of the Colorado River; providing for the use of spear or gig and light for taking flounder in these waters; repealing all laws or parts of laws in conflict herewith; providing when this Act shall take effect; providing for confiscation of nets, seines, and other tackle for evidence; and providing for penalties; and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 823.

**Art. 952. Fish in certain counties**

Section 1. Whoever shall barter or sell or offer for barter or sale any bass, perch, crappie, or catfish taken from any of the fresh water streams of the Counties of Comal, Guadalupe, Bexar, Kerr, Bandera, Medina, and Wilson, shall be fined not less than Five Dollars (\$5) nor more than Fifty Dollars (\$50). As amended Acts 1939, 46th Leg., Spec. L., p. 812, § 1.

Effective Feb. 21, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

**Art. 952l—10. Regulating taking of fish and shrimp in tidal waters and Galveston Bay**

Section 1. It shall be lawful to use strike nets, gill nets, trammel nets, or shrimp trawls as defined by the Statutes of this State for the taking of fish and shrimp from the waters of East Galveston Bay in the Counties of Galveston and Chambers, except for a hereinafter defined part thereof, and the small abutting bodies known as follows in which it shall be unlawful to use said strike nets, gill nets, trammel nets, or shrimp trawls: Swan Lake, Moses Lake, Clear Lake, Dickinson Bayou west of a line running from Miller's Point to April Fool Point, Turtle Bay, and all waters lying northwest of a line extending from Kemah in Galveston County to a point known as Mesquite Knoll in Chambers County, and all waters of Galveston Bay lying east of a line extending from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intercoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which Cut is at a point southwest of Elm Grove Point on Bolivar Peninsula in Galveston County, Texas, and northeast of Baf-

fle Point on Bolivar Peninsula in Galveston County, Texas, during the period beginning August 15th and ending May 15th of each year. Provided, however, nothing in this Act shall be construed to prohibit the use of shrimp trawls of not more than ten (10) feet in width at the mouth and not more than twenty-five (25) feet in length as permitted by Chapter 11, Acts 1930, Forty-first Legislature, Fourth Called Session. It shall be unlawful for any person to use a strike net, gill net, trammel net, or shrimp trawl, contrary to the provisions of Chapter 119, Page 269, Acts of the Regular Session of the Forty-first Legislature.<sup>1</sup>

<sup>1</sup> Article 941.

Sec. 2. It shall be unlawful to have in possession any seine, strike net, gill net, trammel net, or shrimp trawl in or on any of the tidal waters of this State where the use of said seine, strike net, gill net, trammel net, or shrimp trawl is prohibited from being used in taking or catching fish and/or shrimp, unless such seine, strike net, gill net, trammel net, or shrimp trawl is on board a vessel when such vessel is at port or in a channel while en route to or from the Gulf of Mexico.

Sec. 3. When any officer of this State sees any seine, strike net, gill net, trammel net, or shrimp trawl in or on any of the tidal waters of this State where the use of such seine, strike net, gill net, trammel net, or shrimp trawl is prohibited from being used for the purpose of taking fish and/or shrimp, and has reason to believe and does believe that the same is being used or possessed in violation of the provisions of this Act, it shall be his duty to arrest the party using or possessing said seine, strike net, gill net, trammel net, or shrimp trawl and, without a warrant, shall seize such seine, strike net, gill net, trammel net, or shrimp trawl as evidence. It shall be the duty of such officer to deliver such seine, strike net, gill net, trammel net, or shrimp trawl to the County Judge or Justice of the Peace of the county in which it was seized, where it shall be held as evidence until after the trial. If the defendant is found guilty of possessing or using such seine, strike net, gill net, trammel net, or shrimp trawl unlawfully, the Court shall enter an order directing the immediate destruction of such seine, strike net, gill net, trammel net, or shrimp trawl by the Sheriff or constable of the county where the case was tried, and the Sheriff or constable of the county shall immediately destroy such seine, strike net, gill net, trammel net, or shrimp trawl and make a sworn report to said County Judge or Justice of the Peace, showing how, when, and where said seine, strike net, gill net, trammel net, or shrimp trawl was destroyed. When such device is found by an officer of this State in or on any of the tidal waters of this State without anyone in possession where its use is prohibited, it shall be seized by such officer without warrant and delivered to the County Judge or Justice of the Peace in the county in which it was found. Said officer shall make affidavit that such seine, strike net, gill net, trammel net, or shrimp trawl was found in or on the tidal waters of this State at a point where its use was prohibited, which said affidavit shall describe such seine, strike net, gill net, trammel net, or shrimp trawl and the Court shall direct the Sheriff or any constable of the county to post a copy of said affidavit in the Courthouse of the county in which said seine, strike net, gill net, trammel net, or shrimp trawl was seized, and said officer shall make his return to the Court showing when and where said notice was posted. Thirty (30) days after such notice is posted, the Court, either in termtime or in vacation, shall enter an order directing the immediate destruction of such seine, strike net, gill net, trammel net, or shrimp trawl by the Sheriff or any constable in the county, and said officer executing said order, shall, under oath, make his return to said



Court, showing how, when, and where such seine, strike net, gill net, trammel net, or shrimp trawl was destroyed.

Sec. 4. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five Dollars (\$25) and not more than Two Hundred Dollars (\$200), and his fisherman's license or dealer's license, or both, shall be automatically cancelled, and he shall not be entitled to receive another fisherman's license or dealer's license for one year from the time of such conviction.

Sec. 5. All laws or parts of laws in conflict herewith shall be and the same are hereby repealed. As amended Acts 1939, 46th Leg., Spec.L., p. 818, § 1.

Effective April 24, 1939.

Section 2 of the amendatory Act of 1939 Act should take effect from and after its declared an emergency and provided that the passage.

### Art. 953a. Fishing in Young county

Section 1. It shall be unlawful for any person, firm or corporation, or their agent or agents, to barter or to sell or offer for barter or for sale, or to buy any bass, crappie, perch or catfish, or any other fish except minnows taken from any river, creek, lake, slough, bayou, tank or pond that flows or is situated within the boundary lines of Young County; provided however, that the Brazos River and the Clear Fork of the Brazos be excepted and not included in these waters situated within the boundaries of Young County; provided further, that it shall be unlawful for any person to place in the waters of the Clear Fork of the Brazos River situated within the boundaries of Young County, any seine, net or other device or trap for taking or catching fish with a mesh of less than two (2) inches square and on conviction thereof shall be fined not less than Five Dollars (\$5) nor more than Fifty Dollars (\$50); provided further, that it shall be unlawful for any person to retain or have in his possession any bass or channel catfish which are less than eleven (11) inches in length, or any crappie or white perch, or calico bass, or drum of less than eight (8) inches in length taken from the waters of the Clear Fork of the Brazos River situated within the boundaries of Young County and provided that fish of less than the described length shall be immediately returned to the waters where taken without necessarily injuring, and any person found guilty of a violation shall be fined not less than Five Dollars (\$5) nor more than Fifty Dollars (\$50). [Acts 1929, 41st Leg., 1st C.S., p. 41, ch. 12, as amended Acts 1936, 44th Leg., 3rd C.S., p. 2031, ch. 491, § 1.]

Effective Oct. 28, 1936.

Section 2 of the amendatory Act of 1936 the Act should take effect from and after declared an emergency and provided that its passage.

### Art. 978j. Deer in Anderson and other counties

For fish and game laws applicable only to the named counties see notes under Vernon's Ann.Pen.Code, Art. 978j.

### Art. 978l—1. Sale of fresh water fish taken from counties west of Pecos River

Section 1. From and after the passage of this Act, it shall be illegal for any person to sell or offer for sale any fresh water fish caught or trapped in any manner from or in any of the fresh waters located in any county in this State, lying and being situated west of the Pecos River.

Sec. 2. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be

fined not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars. Acts 1939, 46th Leg., Spec.L., p. 840.

Effective April 19, 1939.

Section 3 of the act of 1939 repeals all conflicting laws and parts of laws.

Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to prohibit the sale of any fresh water fish caught or trapped from the fresh waters of certain counties, fixing a penalty, repealing all laws or parts of laws in conflict herewith, and declaring an emergency. Acts 1939, 46th Leg., Spec.L., p. 840.

**Art. 978m. Coastal Division of Game, Fish and Oyster Commission created**

Section 1. There is hereby created a Division of the Game, Fish and Oyster Commission to be known and designated as the "Coastal Division of Game, Fish and Oyster Commission."

**Director of Coastal Division and assistant; powers and duties of commission and delegation thereof**

Sec. 2. The Game, Fish and Oyster Commission shall have power and authority, and it shall be their duty to appoint an executive officer for the said Coastal Division to be known and designated as "Director of Coastal Division," who shall act as the chief executive officer of the Division under the direction of said Game, Fish and Oyster Commission.

The Commission may perform its duties through said Director of Coastal Division and may delegate to him such executive duties as said Game, Fish and Oyster Commission deems proper. Provided that in the absence of the Coastal Director the Commission shall be empowered to designate an assistant to perform his duties. Said Director of Coastal Division shall also have power and authority to appoint Game and Fish Wardens and other employees as in his discretion may be deemed necessary to carry out and enforce the laws of this State, which it is the duty of the Game, Fish and Oyster Commission to carry out, execute and administer, and to perform all other duties and services authorized and required to be performed by said Game, Fish and Oyster Commission, and shall have the power and authority of other employees of the Game, Fish and Oyster Commission. Said Director of Coastal Division shall serve at the will of said Game, Fish and Oyster Commission. The other employees of the Coastal Division shall serve at the will of the Director of Coastal Division.

**Compensation of employees**

Sec. 3. The compensation of all employees of the Coastal Division herein provided for shall be fixed by the Game, Fish and Oyster Commission; provided that the Legislature in each biennial appropriation bill shall fix the maximum compensation to be paid.

**Bond of director, assistant director, and employees**

Sec. 4. The Director of Coastal Division and Assistant Director of Coastal Division shall each enter into a good and sufficient bond in the sum of Two Thousand Dollars (\$2,000) payable to the State of Texas, to be approved by the Game, Fish and Oyster Commission, conditioned upon the faithful performance of his duties under the law. The premium on such bonds shall be paid by the State out of funds available to the Game, Fish and Oyster Commission. The Director of Coastal Division and Assistant Director of Coastal Division shall take the Constitutional Oath of office. All other employees of the Coastal Division shall execute a bond in the sum of One Thousand Dollars (\$1,000), to be approved by the Director of Coastal Division, payable to the State of Texas and conditioned on the faithful performance of the duties of his office. The Game, Fish and

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Oyster Commission may require any employee who handles funds belonging to the Department to give a bond up to as high as Ten Thousand Dollars (\$10,000).

The Chairman nor the members of the Commission, the Director of Coastal Division nor Assistant Director of Coastal Division shall be liable on their respective bonds for any act of any employee of the Department, but on the other hand the bond of any such employee shall cover the individual acts of each.

#### Appropriation

Sec. 5. There is hereby appropriated out of the State Treasury all moneys now in the Fish and Oyster Fund and all moneys collected or to be collected for such fund by the Game, Fish and Oyster Commission, under any laws of this State relating thereto, for the purpose of carrying out this Act or performing any duties or services under any laws of this State. Acts 1937, 45th Leg., p. 1321, ch. 487.

Section 6 of this Act made it effective September 1, 1937. Section 7 repeals all conflicting laws and parts of laws. Section 8 provided that the Act should take effect from and after its passage.

Local and special Acts relating to Coastal Zone and Gulf Coastal Zone, see Art. 978j, note.

#### Title of Act:

An Act creating the Coastal Division of Game, Fish and Oyster Commission; giving the power and making it the duty of the Game, Fish and Oyster Commission to appoint an Executive Officer for the

Division; providing that it may perform its duties through said officer; providing for the appointment by the Commission of an Assistant Director of Coastal Division; providing the amount of compensation to be paid employees of the Division to be fixed by the Commission; providing for bonds for employees of Coastal Division; appropriating the Fish and Oyster Fund; providing the effective date of the Act; providing a saving clause; repealing all laws in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 1321, ch. 487.]

## TITLE 14—TRADE AND COMMERCE

### CHAPTER SIX—OFFENSES AGAINST LABELS, TRADE MARKS, ETC.

#### Art. 1063. Filling or not returning container

Whoever shall, other than the lawful owner, for any purpose whatever, fill with milk, cream, butter, or ice cream any milk can, milk bottle, milk bottle case, milk jar, butter box, ice cream can, or ice cream tub or mutilate or destroy without the consent of the owner of the same, or willfully refuse to return or deliver to such owner, upon demand, any such milk can, milk bottle, milk bottle case, milk jar, butter box, ice cream can, or ice cream tub branded or stamped with the name or trade-mark of such owner, or bearing any private mark in common use by such owner, or from which such brand or stamp or private mark, or marks have been removed, cut off or defaced, shall be fined not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100). [As amended Acts 1937, 45th Leg., p. 428, ch. 218, § 1.]

Amendment of 1937, effective April 26, 1937.

Section 4 of the amendatory Act of 1937 p. 428, ch. 218, declares the provisions of the Act to be severable and that if any

provision is held invalid, such invalidity shall not affect the remainder and section 5 declares an emergency making the Act effective on and after its passage.

#### Art. 1064. Injuring milk containers, etc.

Whoever shall remove, cut off, deface, or obliterate the stamp or brand or private mark of any owner of any milk can, milk bottle, milk bottle case, milk jar, butter box, ice cream can, or ice cream tub, or stamp

or place other than brands or stamps or private mark on any such milk bottle, milk jar, milk can, milk bottle case, butter box, ice cream can, or ice cream tub, without the written permission of such owner, shall be fined not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100). As amended Acts 1937, 45th Leg., p. 428, ch. 218, § 2.

Amendment of 1937, effective April 26, 1937.

See note to article 1063.

#### Art. 1065. Ownership of milk containers, etc.

Any person, firm, or corporation, or joint stock association owning or using milk cans, milk bottles, milk bottle cases, milk jars, butter boxes, ice cream cans, or ice cream tubs in his, her, or their name or names, or private mark or marks in common use branded or stamped or placed on the same shall be considered the owner thereof. [As amended Acts 1937, 45th Leg., p. 428, ch. 218, § 3.]

Amendment of 1937, effective April 26, 1937. See note to article 1063.

### CHAPTER SEVEN—ASSUMED NAME

#### Arts. 1067—1070

Acts 1937, 45th Leg., p. 473, ch. 238, amending Revised Civil Statutes of 1925, articles 6111, 6113, 6116, 6122, relating to limited partnerships, provides in section

1a that nothing contained in the amendatory act of 1937 "shall be construed to change, alter, amend or repeal chapter 7, Title 14, Penal Code."

### CHAPTER ELEVEN—GASOLINE AND PETROLEUM PRODUCTS

#### Art. 1104. Must not flash

No person, firm, association of persons, or corporation shall sell or offer for sale any kerosene or distillate to be used for domestic cooking, illuminating, heating, or other domestic uses, having a flash point at a temperature below 112 degrees Fahrenheit, according to the United States official closed cup testing method of the United States Bureau of Mines. As amended Acts 1937, 45th Leg., p. 648, ch. 318, § 1.

Amendment of 1937, effective May 13, 1937.

Section 2 of the amendatory Act of 1937 declared an emergency and provided that the Act should take effect from and after its passage.

### CHAPTER TWELVE—MISCELLANEOUS OFFENSES

Art.

1125a. Livestock commission merchants [New].

#### Art. 1125a. Livestock commission merchants

Sec. 9. Whoever advertises or solicits business as a livestock auction commission merchant, or in any way pursues the occupation of a livestock auction commission merchant, without first having made the bond required by the law of this State, or failed to keep and maintain said bond in full force and effect as required by such law, or who shall fail to keep an accurate description of said property, giving the marks and brands thereon, if any, or who shall fail to make quarterly reports to the Commissioners Court of the county in which he pursues such business, giving such description of said livestock, which shall contain the name of the consignor, together with the name and address of the person or persons purchasing the same, shall be guilty of a misdemeanor, and upon

conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25), nor more than One Thousand Dollars (\$1,000), or be confined in the county jail of such county for any period of time not exceeding thirty (30) days, or by both such fine and imprisonment.

Sec. 10. Any person engaged in the business of livestock auction commission merchant, as defined by this Chapter, who shall intentionally fail and refuse, within forty-eight (48) hours after the sale of any livestock consigned to him and sold by him at auction, to remit the net proceeds thereof to the person or persons rightfully entitled to receive the same, or to such person, firm, or corporation as said parties rightfully entitled thereto shall direct, shall be deemed guilty of a misdemeanor, and shall be punished with a fine of not less than Twenty-five Dollars (\$25), nor more than One Hundred Dollars (\$100), or be imprisoned in the county jail for not exceeding thirty (30) days, or by both such fine and imprisonment.

Sec. 11. Any person engaged in the business of a livestock auction commission merchant, who shall appropriate or use for any purpose, other than remitting to said person, firm, or corporation entitled to receive the same, any portion of the net proceeds of livestock so sold at auction by such livestock auction commission merchant, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding One Thousand Dollars (\$1,000), and shall be confined in the county jail in said county not exceeding one year.

Sec. 12. Any livestock auction commission merchant who shall fail at any time to keep conspicuously posted in the main office of his principal place of business a certified copy of the bond furnished to him by the County Clerk, under the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding One Hundred Dollars (\$100), and each day that said copy shall not be so posted is a separate offense. Acts 1937, 45th Leg., p. 387, ch. 192.

Effective April 26, 1937.  
Section 13 of this Act declared an emergency making the Act effective on and

after its passage. Sections 1 to 8 are published as Rev.Civ.St. article 1287a.

## TITLE 15—OFFENSES AGAINST THE PERSON

### CHAPTER TWO—AGGRAVATED ASSAULTS AND OTHER OFFENSES

#### Art. 1149. Assault with motor vehicle

If any driver or operator of a motor vehicle or motorcycle shall willfully or with negligence, as is defined in the Penal Code of this State in the title and chapter on negligent homicide, collide with or cause injury less than death to any other person he shall be held guilty of aggravated assault, and, upon conviction, shall be punished by fine not less than Twenty-five (\$25.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in jail not less than one month nor more than two years, or by both such fine and imprisonment; unless such injuries result in death, in which event the driver or operator of any motor vehicle or motorcycle shall be dealt with under the general law of homicide. As amended Acts 1939, 46th Leg., p. 240, § 1.

Effective May 15, 1939.  
Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of

laws. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

**TITLE 17—OFFENSES AGAINST PROPERTY****CHAPTER THREE—MALICIOUS MISCHIEF**

Art.

1371a. Unregistered dogs prohibited from running at large [New].

Art. 1371a. Unregistered dogs prohibited from running at large

Section 1. From and after the effective date of this Act, it shall be unlawful for the owner or any person, having control of any dog six (6) months or more of age, to permit or allow said dog to run at large, unless such dog shall have been by such owner or person having control of said dog duly registered with the County Treasurer of the county in which said dog runs at large, and shall have securely fastened about its neck a dog identification tag showing its registration and duly assigned to said dog by the County Treasurer of said county in the manner hereinafter set forth. It shall be the duty of the Commissioners Court to furnish the County Treasurer the necessary dog identification tags numbered consecutively from one up and each such identification tag shall, also, have printed or impressed on it the name of the county in which said tag is issued. At the time any dog is registered hereafter under the provisions of this Act, it shall be the duty of the County Treasurer to assign to such dog a registration number and deliver to the owner or person having control of said dog the necessary dog identification tag as herein provided for. The County Treasurer shall, also, issue to the person registering any dog a certificate showing that said dog has been duly registered under this Act.

The County Treasurer shall likewise be furnished with a substantial and well-bound book for registration of dogs which book shall show the age, breed, color, and sex of each dog so registered, together with the date of registration.

**Unmuzzled dogs prohibited from running at large at night**

Sec. 2. From and after the effective date of this Act it shall be unlawful for the owner of any dog to allow such dog to run at large between sunset and sunrise of the following day, unless such dog has securely fastened about his mouth a leather or metallic muzzle as will effectively prevent such dog from killing or injuring sheep, goats, calves, or other domestic animals or fowls.

**Killing of dogs for attacking domestic animals authorized**

Sec. 3. Any dog, whether registered and tagged or not, when found attacking any sheep, goats, calves, and/or other domestic animals or fowls, or which has recently made, or is about to make such attack on any sheep, goats, calves, and/or other domestic animals and fowls, may be killed by anyone present and witnessing or having knowledge of such attack and without liability in damage to the owner of such dog. Any dog, whether registered and tagged or not, known or suspected to be a killer of sheep, goats, calves, or other domestic animals or fowls, is hereby declared to be a public nuisance and such dog may be detained or impounded by any person until the owner may be notified, and until all damage done by said dog shall have been determined and paid to the proper parties. Any dog known to have attacked, killed, or injured any sheep, goat, calf, or other domestic animal or fowl, shall be killed by the owner of such

dog, and upon failure of such owner so to do, any sheriff, deputy sheriff, constable, police officer, magistrate, or County Commissioner is authorized to kill such dog, and such officer is further authorized to go upon the premises of the owner of such dog for such purpose.

The owner of any sheep, goats, or other domestic animals, subject to the ravages of sheep-killing dogs, may place poison on the premises where such sheep, goats, and other domesticated animals are kept, after posting notices of such poison at each place of entrance to said premises.

#### **Annual registration tax; disposition of money**

Sec. 4. Each dog so registered shall be subject to a tax of One Dollar (\$1) which shall be paid to the County Treasurer at the time of such registration and shall cover the costs of registration and identification tag, and shall be good for the period of one year from date of such registration. Upon the removal of a dog from one county to another, the owner may present his registration certificate to the County Treasurer of the county to which such dog is removed and receive without additional cost a registration certificate effective to the end of the year for which such dog was registered in the other county and likewise in any other county to which such dog may be removed. The tax so collected shall be placed in a special fund and shall be used only for defraying the expenses of administration of this Act in such county and for reimbursing the owner or owners of sheep, goats, calves, and/or other domestic animals, and/or fowls that may have been killed in such county by dogs not owned by the person seeking reimbursement. Such payment shall be made on order of the Commissioners Court and only on satisfactory proof. Such payment shall be made in the amount, and at such time as the said Commissioners Court may determine, and in the event that such fund shall be insufficient to reimburse all injured parties in full, payment shall be made pro rata. The County Treasurer shall keep an accurate record showing all amounts coming into said fund and disbursements therefrom. Provided, that any dog brought into the county for breeding purposes, trial, or show for a period of not exceeding ten (10) days shall not be required to be registered. Provided further, that upon sale or transfer of ownership of a dog, the registration certificate shall be transferred to the new owner.

#### **Penalty**

Sec. 5. The owner of any dog who shall willfully fail or refuse to register such dog, or who shall willfully fail or refuse to allow a dog to be killed when ordered by the proper authorities so to do, or who shall willfully violate any provision of this Act, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding One Hundred Dollars (\$100), or by confinement in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

#### **Local option; election procedure**

Sec. 6. This Act shall not be effective in any county unless and until the qualified property taxpaying voters of such county, by a majority vote at an election held for such purposes, shall have voted therefor. Upon a petition signed by one hundred (100), or a majority of the qualified property taxpaying voters of a county, the Commissioners Court shall order an election to be held throughout such county in not less than ten (10) nor more than twenty (20) days to determine whether or not the registration of and the tax on dogs shall be required in such county. Notice of such election shall be given by the publication of said notice one time in a newspaper of general circulation in the English language in said county. But if there be no newspaper in the English language and

of general circulation published in the said county, then such notice shall be posted at the courthouse door for a period of not less than one week before such election. At such election those favoring the putting into force of this law in such county shall have written or printed on their ballots the words: "For Registration of and Tax on Dogs" and those opposed to the proposition shall have written or printed on their ballots the words: "Against the Registration of and Tax on Dogs." If a majority of those voting at such election shall be in favor of such registration and tax, then such law shall become effective within ten (10) days from the date on which the result of such election shall have been declared. Returns of such election shall be made by the presiding officers of same within three (3) days after such election, and in duplicate to the County Judge and County Clerk. The Commissioners Court shall canvass such returns and declare the result not later than the first Monday after such returns are made, and if the vote be in favor of the registration of and tax on dogs, then the County Judge shall issue his proclamation declaring the result of said election and putting the same into force and effect in said county, which proclamation shall be published one time in a newspaper of general circulation in the English language in said county. But if there be no newspaper in the English language and of general circulation published in said county, then such proclamation shall be posted at the courthouse door.

When an election under this Section shall have been held and the result of same has been adverse to the registration of and tax on dogs, then no other election shall be held on the same subject for a period of six (6) months. But if the result shall be for the registration of and tax on dogs, then no election for the repeal of same shall be held for a period of two (2) years. The returns of such election shall be preserved for one year after such election.

When an election, under this Act, shall have been held and the results shall be for the registration of and tax on dogs, each owner or person having control of any dog of the age of six (6) months or more in said county shall, within thirty (30) days from the date of the proclamation herein provided for, register said dog with the County Treasurer of said county under the provisions of this law.

#### Partial Invalidity

Sec. 7. If any provision, paragraph, or sentence of this Act shall be held invalid, such invalidity shall not affect or invalidate the remaining provisions, paragraphs, and sentences of this Act. [Acts 1937, 45th Leg., p. 1119, ch. 450.]

Effective 90 days after May 22, 1937, date of adjournment.

Section 8 repeals all conflicting laws and parts of laws. Section 9 declared an emergency and provided that the Act should take effect from and after its passage.

#### Title of Act:

An Act providing for the registration of dogs and for a tax on same; prohibiting unregistered dogs from running at large; prohibiting dogs not muzzled from running at large during the nighttime; providing conditions under which certain dogs may

be killed; making it unlawful to own and keep a dog not registered; prescribing conditions under which poison may be put out for dogs; prescribing the rate of tax and for use and distribution of such fund; prescribing a penalty for violation of this Act; providing a method by which this Act may be made effective in counties; providing a saving clause in case any part of this Act be held invalid; repealing any and all laws in conflict herewith, and declaring an emergency. [Acts 1937, 45th Leg., p. 1119, ch. 450.]

#### Art. 1377. [1235] Entering inclosed land to hunt or fish

Acts 1939, 46th Leg., Spec.L., p. 335, effective May 18, 1939, reads as follows:

"Section 1. In counties having a population of not less than fifteen thousand, one



For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

hundred and forty-nine (15,149) and not more than fifteen thousand, three hundred (15,300) inhabitants according to the last preceding Federal Census whoever shall enter upon the inclosed or uninclosed land of another without the consent of the owner, proprietor, or agent in charge thereof, and hunt with firearms or catch any game thereon, or thereon catch or take or attempt to catch or take any fish from any pond, lake, tank, or stream on said land or in any manner depredate upon the same, or take or attempt to take any property therefrom, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined any sum not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200) and by a forfeiture of his hunting license and the right to hunt in the State of Texas for a period of one year from the date of his conviction. By 'inclosed land' is meant such land as is in use for agriculture or grazing purposes or for any other purpose, and inclosed by any structure for fencing, either of wood or iron or combination thereof, or wood and wire, or partly by water or stream, canyon, brush, rock or rocks, bluffs, or island. Proof of ownership or lease or agency may be made by parol testimony; providing, however, that this Act shall not apply to inclosed or uninclosed land which is rented or leased for hunting or fishing or

camping privileges where the owner, proprietor, or agent in charge or any person for him, by any and every means has received or contracted to receive more than Twenty-five (25) Cents per acre per year or any part of a year for such hunting, fishing, or camping privileges, or where more than Four Dollars (\$4) per day per person is charged for such hunting, fishing, or camping privileges, and provided further that this exception shall exist for a period of one year from the date of the receipt of such sum or sums of money.

"Sec. 2. Any person found upon the inclosed land of another without the owner's consent, shall be subject to arrest by any peace officer, and such arrest may be made without warrant of arrest."

Sec. 3 of the act stated: "The fact that there are now no provisions in the Penal Code of the State of Texas whereby it is unlawful for any person to enter upon the uninclosed land of another without the consent of the owner, proprietor, or agent in charge thereof, and hunt with firearms or catch any game thereon, or thereon catch or take or attempt to catch or take any fish from any pond, lake, tank or stream on said land or in any manner depredate upon the same, or take or attempt to take any property from the inclosed or uninclosed land of another," and was also the emergency clause.

## CHAPTER FOUR—TIMBER AND LOGS

Art.

1388b—1. Setting fire to timber, grass, fences, crops, stubble, etc., on another's lands [New].

### Art. 1379. Cutting or destroying merchantable timber

Whoever, without the consent of the owner, shall knowingly cut down or destroy any merchantable timber upon any land not his own, or shall knowingly and without such consent carry away any such merchantable timber shall be confined in the penitentiary for not less than one (1) nor more than five (5) years. The words "merchantable timber" as used herein include rails or other articles manufactured from merchantable timber; and the word "owner" includes the State and any corporation, public or private, individual or partnership or association, owning lands within this State. As amended Acts 1939, 46th Leg., p. 241, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1939

declared an emergency and provided that the Act should take effect from and after its passage.

### Art. 1388b—1. Setting fire to timber, grass, fences, crops, stubble, etc., on another's lands

Section 1. Any person who willfully sets fire to woods, forests, fences, grass or rubbish of any kind, on lands of which he is not in possession or control at the time of setting out such fire, or who willfully causes fire to be communicated to such woods, forests, fences, grass or rubbish, or who willfully and maliciously sets on fire or causes to be

set on fire any timber, weeds, or marshes, so as to cause loss or injury to another, shall be guilty of a misdemeanor, and on conviction must be fined not less than Ten (\$10.00) Dollars, nor more than Two Hundred (\$200.00) Dollars.

Sec. 2. Any person who willfully sets fire to any pine forest which is used for the purpose of procuring turpentine, must, on conviction, be fined not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than twelve (12) months.

Sec. 3. Any person who negligently causes fire to be communicated to any pine forest which is used for the purpose of procuring turpentine, or to any forest belonging to another, and thereby injures or destroys the same, must, on conviction, be fined not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars.

Sec. 4. Every individual or corporation who willfully or negligently sets or communicates fire to timber lands, woods, brush, grass, or stubble, on lands not their own, shall be guilty of a misdemeanor. Acts 1939, 46th Leg., p. 242.

Effective May 1, 1939.

Section 5 of the Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to conserve, preserve, and protect lands, products of lands, including timber and crops, and providing penalties; and declaring an emergency. Acts 1939, 46th Leg., p. 242.

## CHAPTER EIGHT—THEFT IN GENERAL

Art.

1426c. Stealing wool, mohair, or edible meat a felony [New].

1436—1. Motor vehicles; Certificate of Title Act [New].

Art.

1436a. Regulating dealing in used pipe line and oil and gas equipment; definitions [New].

[Art. 1426b. Stealing citrus fruits]

Section 1. Any person who shall enter any citrus orchard or citrus grove in this State and steal or carry away, or aid or assist in stealing or so carrying away, or any person who shall enter any citrus orchard with the intent to steal or carry away, or with the intent to aid or assist in stealing, or so carrying away, without the consent of the owner, more than five bushels of any grapefruit, oranges, lemons, limes, or other citrus fruit, whether growing or gathered, shall be guilty of a felony. Whoever shall violate the provisions of this Act shall, upon conviction, be confined in the penitentiary for not more than ten (10) years, or shall be confined in jail for not more than one hundred (100) days, or shall be fined not more than Two Hundred (\$200.00) Dollars, or be punished by both such fine and imprisonment in jail; provided that if the amount of grapefruit, limes, lemons, oranges, or other citrus fruits stolen or carried away is less than five bushels, such persons shall be guilty of a misdemeanor, and fined not less than Ten (\$10.00) Dollars nor more than Two Hundred (\$200.00) Dollars. It shall be prima facie evidence of intent to steal or carry away without the consent of the owner or to aid or assist in stealing or so carrying away such property for any person, without the consent of the owner, and away from any established or customarily used gate or roadway, to enter with a truck, trailer, motor vehicle or other motor vehicle designed or used for transporting property, any such citrus orchard or citrus grove, or to so enter or be on, with or with-

out any vehicle of transportation, such premises with any baskets, crates, hampers, sacks, or containers, capable of being used in transporting any such property, or in the night time to enter or be on such premises without the consent of the owner of any such grapefruit, oranges, lemons, limes or other citrus fruit, with any motor vehicle without lights fully lighted in accord with the laws of this State with respect to the operation of motor vehicles upon the public highways at night.

Sec. 2. This Act shall be cumulative of all laws of this State and any violation hereof may be prosecuted irrespective of whether or not the Acts complained of may constitute some of the essential elements of other or different offenses against the penal laws of this State; and for the purposes of this Act, the word "steal" shall mean to take wrongfully and without just claim of authority, any such property, and such word need not be defined in any indictment for the prosecution of any offense hereunder. As amended Acts 1939, 46th Leg., p. 244.

Effective April 18, 1939.

Section 3 of the amendatory act of 1939 provided that if any section, paragraph, sentence, clause, or word of the Act was held to be unconstitutional, the remaining portions of the same, nevertheless, should

be valid; and the Legislature declared that the Act would have been enacted without such unconstitutional portion. Section 4 declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 1426c. Stealing wool, mohair, or edible meat a felony

Whoever shall steal any wool or mohair or edible meat, shall upon conviction, be guilty of a felony, and shall be confined in the penitentiary for not more than ten (10) years, or shall be confined in jail for not more than two (2) years, or shall be fined not more than Two Hundred Dollars (\$200), or be punished by both such fine and imprisonment in jail. Acts 1937, 45th Leg., p. 709, ch. 357, § 1.

Effective May 15, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act making theft of wool or mohair or edible meat a felony; prescribing penalties therefor, and declaring an emergency. [Acts 1937, 45th Leg., p. 709, ch. 357.]

#### Art. 1436—1. Motor vehicles; Certificate of Title Act

Section 1. This Act shall be referred to, cited, and known as the "Certificate of Title Act," and in the enactment hereof it is hereby declared to be the legislative intent and public policy of this State to lessen and prevent the theft of motor vehicles, and the importation into this State of and traffic in stolen motor vehicles, and the sale of encumbered motor vehicles without the enforced disclosure to the purchaser of any and all liens for which any such motor vehicle or the tires, radios, parts, or appliances thereof stands as security, and the provisions hereof, singularly and collectively, are to be liberally construed to that end. The following terms as herein defined shall control in the enforcement and construction of this Act.

Sec. 2. The term "Motor Vehicle" means every kind of motor driven or propelled vehicle now or hereafter required to be registered or licensed under the laws of this State.

Sec 3. The term "Lien" means every kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other written instrument of whatsoever kind or character whereby an interest, other than absolute title, is sought to be held or given in a motor vehicle, also any lien created or given by Constitution or Statute.

Sec. 4. The term "Owner" includes any person, firm, association, or corporation other than a manufacturer, importer, distributor, or dealer claiming title to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale as herein defined, except the Federal Government and any of its agencies, and the State of Texas and any governmental subdivision or agency thereof not required by law to register or license motor vehicles owned or used thereby in this State.

Sec. 5. The term "Mortgagee" means any person, firm, association, or corporation holding a lien as herein defined on a motor vehicle.

Sec. 6. The term "Mortgagor" means any person, firm, association, or corporation giving a lien on a motor vehicle or agreeing that a lien may be retained thereon or any part thereof or as against whom a lien arises under the Constitution or Statute.

Sec. 7. The term "First Sale" means the bargain, sale, transfer, or delivery within this State with intent to pass an interest therein, other than a lien of a motor vehicle which has not been previously registered or licensed in this State.

Sec. 8. The term "Subsequent Sale" means the bargain, sale, transfer, or delivery within this State, with intent to pass an interest therein, other than a lien of a motor vehicle which has been registered or licensed within this State or when it has not been required under law to be registered or licensed in this State.

Sec. 9. The term "New Car" means a motor vehicle which has never been the subject of a first sale.

Sec. 10. The term "Used Car" means a motor vehicle that has been the subject of a first sale whether within this State or elsewhere.

Sec. 11. The term "Person" includes individuals, firms, associations, and corporations, but shall not include the Federal Government or any of its agencies, the State of Texas or any governmental subdivision or agency thereof not required by law to register motor vehicles owned or used thereby.

Sec. 12. The term "Hereafter" means after the effective date of this Act.

Sec. 13. The term "Receipt" means the written acknowledgment by a designated agent of the Department of having received an application for a certificate of title and the required fee, on such form as may be prescribed by the Department from time to time.

Sec. 14. The terms "Stolen" and "Converted" mean the same as defined in the Penal Code.

Sec. 15. The term "Concealed Motor Vehicle" means a motor vehicle that is concealed, as defined in Article 1557 of the Penal Code as amended by Acts of 1929, Forty-first Legislature, Page 237, Chapter 102, Section 1.

Sec. 16. The term "Manufacturer" means any person regularly engaged in the business of manufacturing or assembling new motor vehicles, either within or without this State.

Sec. 17. The term "Importer" means any person, except a manufacturer, who brings any used motor vehicle into this State for the purpose of sale within this State.

Sec. 18. The term "Distributor" means any person engaged in the business of selling to a dealer motor vehicles theretofore bought from a manufacturer.

Sec. 19. The term "Dealer" means any person purchasing motor vehicles for resale at retail to owners.

Sec. 20. The term "Motor Number" means the manufacturer's original number affixed to or imprinted upon the engine or motor in a motor vehicle.

Sec. 21. The term "Serial Number" means the manufacturer's serial number affixed to or imprinted upon the chassis or other part of the motor vehicle.

Sec. 22. The term "Manufacturer's Certificate" means a certificate on form to be prescribed by the Department showing original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title must show thereon, on appropriate forms to be prescribed by the Department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer to owner.

Sec. 23. The term "Importer's Certificate" means the certificate on form to be prescribed by the Department for each used motor vehicle brought into this State for the purpose of sale within this State, and such importer's certificate must be accompanied by such evidence of title to the motor vehicle as the Department may, from time to time, require in order to show a good title and the names and addresses of all mortgagees.

Sec. 24. The term "Certificate of Title" means a written instrument which may be issued solely by and under the authority of the Department, and which must give the following data together with such other data as the Department may require from time to time:

(a) The name and address of the purchaser and seller at first sale or transferee and transferrer at any subsequent sale.

(b) The make.

(c) The body type.

(d) The motor number.

(e) The serial number.

(f) The number of the license plates currently assigned thereto and the State of issuance, whether in this or any other State.

(g) The names and addresses and dates of any liens on the motor vehicle, in chronological order of recordation.

(h) If no liens are registered on the motor vehicle, a statement of such fact.

(i) A space for the signature of the owner and the owner shall write his name with pen and ink in such space upon receipt of the certificate.

Sec. 25. The term "Department" means the Department of Public Safety of the State of Texas.

Sec. 26. The term "Designated Agent" means each County Tax Collector in this State who may perform his duties under this Act through any regular deputy.

Sec. 27. Before selling or disposing of any motor vehicle required to be registered or licensed in this State on any highway or public place within this State, except with dealer's metal or cardboard license number thereto attached as now provided by law, the owner shall make application to the designated agent in the county of his domicile upon form to be prescribed by the Department for a certificate of title for such motor vehicle.

Sec. 28. No designated agent shall issue a receipt for an application for certificate of title to any new motor vehicle the subject matter of the first sale unless the applicant shall deliver to such agent a manufacturer's certificate properly assigned by the manufacturer, distributor,

or dealer shown thereon to be the last transferee to the applicant, upon form to be prescribed by the Department.

Sec. 29. No such designated agent shall issue a receipt for a certificate of title to any used motor vehicle imported into this State for the purpose of sale within this State without delivery to him by the applicant of an importer's certificate properly assigned by the importer upon form to be prescribed by the Department.

Sec. 30. Before any motor vehicle brought into this State by any person, other than a manufacturer or importer, and which is required to be registered or licensed within this State, can be bargained, sold, transferred, or delivered with intent to pass any interest therein or encumber by any lien, application on form to be prescribed by the Department must be made to the designated agent of the county wherein the transaction is to take place for a certificate of title, and no such designated agent shall issue a receipt until and unless the applicant shall deliver to him such evidence of title as shall satisfy the designated agent that the applicant is the owner of such motor vehicle, and that the same is free of liens except such as may be disclosed on an affidavit in form to be prescribed by the Department.

Sec. 31. Every designated agent in this State receiving an application for certificate of title shall, when the provisions hereof have been complied with, issue a receipt to the applicant and shall note thereon the required information concerning the motor vehicle and the existence or nonexistence of liens as disclosed in the application, and deliver such receipt, upon payment of the required fees, to the applicant, and such receipt pending the issuance of the certificate of title shall authorize the operation of such motor vehicle on the highways and public places within this State for a period of not to exceed ten (10) days, and upon the expiration of such period of time shall cease to be effective for any purpose, but may be renewed under such reasonable rules and regulations as may be promulgated by the Department.

Sec. 32. Every designated agent within this State shall, on the same day issued by him, forward to the Department, under registered prepaid postage, copies of all receipts issued by him together with such evidences of title as may have been delivered to him by the several applicants and the Department, within five (5) days after receiving such application, if upon inspection thereof it is satisfactorily shown that the certificate of title should issue, shall issue certificate of title and send the same to the address of the applicant as given in his application.

Sec. 33. No motor vehicle may be disposed of at subsequent sale unless the owner designated in the certificate of title shall transfer the certificate of title on form to be prescribed by the Department before a Notary Public, which form shall include, among such other matters as the Department may determine, an affidavit to the effect that the signer is the owner of the motor vehicle, and that there are no liens against such motor vehicle, except such as are shown on the certificate of title and no title to any motor vehicle shall pass or vest until such transfer be so executed.

Sec. 34. When all of the forms of transfer on any certificate of title have been used by reason of subsequent sales, such certificate of title may be delivered to any designated agent within this State, and a receipt taken therefor as provided in the case of first sale, and such agent shall forward the same to the Department on the same day received by him, and a new certificate of title shall be issued by the Department.

Sec. 35. Whenever the ownership of a motor vehicle registered or licensed within this State is transferred by operation of law, as upon inheritance, devise or bequest, bankruptcy, receivership, judicial sale,

or any other involuntary divestiture of ownership, the Department shall issue a new certificate of title upon being provided with certified copy of the probate proceedings, if any (if no administration is necessary, then upon affidavit showing such fact and all of the heirs at law and specification by the heirs as to in whose name the certificate shall issue), or order, or bill of sale from the officer making the judicial sale, except however, that where foreclosure is had under the terms of a lien, the affidavit of the person, firm, association, or corporation or authorized agent, of the fact of repossession and divestiture of title in accordance with the terms of the lien, shall be sufficient to authorize the issuance of a new certificate of title in the name of the purchaser at such sale, and except further that in the case of the foreclosure of any Constitutional or Statutory lien, the affidavit of the holder of such lien, or if a corporation, its agent, of the fact of the creation of such lien and the divestiture of title by reason thereof in accordance with law, shall be sufficient to authorize the issuance of a new certificate of title in the name of the purchaser.

Sec. 36. Should a certificate be lost or destroyed the owner thereof may procure a new one by making affidavit upon such form as may be prescribed by the Department from time to time.

Sec. 37. (a) When any motor vehicle registered or licensed in Texas to which a certificate of title has been issued is junked, dismantled, destroyed, or its motor number changed or the motor vehicle changed in such manner that it loses its character as a motor vehicle, or in such manner that it is not the motor vehicle described in such certificate of title, the owner named last in the certificate of title shall surrender the certificate of title to the Department together with the written consent of the holders of all unreleased liens noted thereon, and the certificate shall be cancelled on the records of the Department. Provided that nothing herein shall affect the sale of used parts for automobiles when sold as such.

(b) Any person rebuilding or assembling a motor vehicle, shall, before using same or operating same, or permitting the operation of same, or disposing of same, procure a certificate of title for same from the Department. For the purpose of obtaining any such certificate of title said person shall furnish an affidavit setting forth where, when, and how, and from whom he procured the various respective parts used in the rebuilding or assembling of such motor vehicle for which certificate of title is sought; provided, however, that the Department shall not issue such certificate of title unless and until it has satisfied itself that the facts set forth are true and correct, and that the person making the affidavit is in fact the person purported in such affidavit to be the maker thereof.

Sec. 38. The Department shall refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the same, upon any of the following grounds:

(a) That the application contains any false or fraudulent statement, or that the applicant has failed to furnish required information requested by the Department, or that the applicant is not entitled to the issuance of a certificate of title under this Act.

(b) That the Department has reasonable ground to believe that the vehicle is a stolen or converted vehicle as herein defined, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee.

(c) That the registration of the vehicle stands suspended or revoked.

(d) That the required fee has not been paid.

Sec. 39. Any person interested in a motor vehicle to which the Department has refused to issue a certificate of title or has suspended or revoked the certificate of title, feeling aggrieved, may apply to the designated agent of the county of such interested person's domicile for a hearing, whereupon such designated agent shall, on the same day such application for hearing is received by him, notify the Department of the date of the hearing, which shall not be less than ten (10) days nor more than fifteen (15) days, and at such hearing such applicant and the Department may submit evidence, and a ruling of the designated agent shall bind both parties as to whether or not the Department has acted justly in the premises.

(a) Such applicant feeling aggrieved with the ruling of the designated agent, may, within five (5) days and not thereafter, appeal to the County Court of the county of the applicant's residence, who shall proceed to try the issues as in other civil cases, and all rights and immunities granted in the trial of civil cases shall be available to the interested parties.

(b) If the action of the Department complained of is sustained, a certificate of title for the particular motor vehicle involved shall only be issued upon such reasonable rules and regulations as the Department may prescribe.

(c) Should the final decision be against the ruling of the Department, the certificate of title shall issue forthwith.

Sec. 40. No person shall, without lawful authority, execute any application or transfer any certificate of title or receipt for any person other than himself, except that firms, associations, and corporations may act through authorized agents.

Sec. 41. No lien shall be valid on any motor vehicle which is hereafter the subject of a first sale, or be enforceable against any such motor vehicle unless there is noted on the importer's or manufacturer's certificate the date, name, and address of the mortgagees whose rights arise out of or are incident to such first sale by reason of the execution of any written instrument by the transferee.

Sec. 42. No lien on any motor vehicle shall be valid as against third parties without actual knowledge thereof or enforceable against the motor vehicle of any such third parties as the issuance of a certificate of title thereof, unless an application for a new title is made as prescribed in this Act and all first and subsequent liens noted by the Department thereon.

Sec. 43. All liens on motor vehicles shall take priority according to the order of time the same are recorded on the receipt or certificate of title of all such recordings to be made by the Department.

Sec. 44. No lien on any motor vehicle to which a receipt or certificate of title has been issued shall be valid as against third parties without actual knowledge thereof, or enforceable against the motor vehicle of any such third parties, unless the notation of said lien shall have been caused to be made on receipts and certificates of title on said motor vehicle, as provided in this Act.

Sec. 45. Exposure for sale of any motor vehicle by the owner thereof with the knowledge or consent of any mortgagee shall not affect the rights of any mortgagee as against all third parties.

Sec. 46. Only liens noted on a receipt or certificate of title shall be valid as against creditors of the mortgagor in so far as concerns the motor vehicle.

Sec. 47. When a lien is discharged, the holder thereof shall, on demand of the owner, execute and acknowledge before a Notary Public the



discharge of the lien upon such form as may be prescribed by the Department, and upon presentation of such evidence, the owner may present the certificate of title to the designated agent in the county together with application for title as prescribed in this Act and shall receive from the Department a new title.

Sec. 48. No duplicate receipt or certificate of title shall be issued without the surrender of the original, except upon such reasonable rules and regulations as may be promulgated by the Department.

Sec. 49. (a) Any person who shall alter any certificate of title issued by the Department, or forge or counterfeit any certificate of title purporting to have been issued by the Department under the provisions of this Act, or who shall alter or falsify or forge any assignment thereof, shall be guilty of forgery and upon conviction thereof shall be punished as provided by law.

(b) Any person who shall alter, change, erase, or mutilate, for the purpose of changing the identity, any motor number, serial number, or manufacturer's number placed on a motor vehicle, or any part thereof, by the manufacturer, for the purpose of identification, shall be guilty of a felony and shall be confined in the penitentiary for not less than two (2) nor more than five (5) years.

(c) Any person who shall have in his possession a motor vehicle, a motor, a motor block, or any part thereof, knowing that the motor number, serial number, or manufacturer's number, placed on same by the manufacturer for the purpose of identification has been changed, altered, erased, or mutilated, for the purpose of changing the identity of said motor vehicle, motor, motor block, or any part thereof, shall be guilty of a misdemeanor, and shall be punished as provided by this Act.

(d) Any regularly constituted peace officer finding anyone in possession of a motor vehicle, motor, motor block, or any part thereof, on which the motor number, serial number, or manufacturer's number has been altered, changed, erased, or mutilated, shall immediately take into his possession such motor vehicle and shall hold same for a sufficient length of time to establish identity and make the necessary investigation to determine ownership.

Sec. 50. Whenever any motor vehicle registered or licensed in this State is reported to the Department as having been stolen, converted, or concealed, it shall be the duty of the Department, to make a distinctive record thereof and to note the fact on its records of the certificate of title and when any such motor vehicle so reported as stolen, converted, or concealed, has been recovered or found, it shall be the duty of the party making the report to the Department to likewise forthwith notify the Department of the fact so that the Department's records may be changed accordingly.

Sec. 51. It shall hereafter be unlawful for any person, either by himself or through any agent, to offer for sale or to sell or to offer as security for any obligation any motor vehicle registered or licensed in this State without then and there having in his possession the proper receipt or certificate of title covering the motor vehicle so offered.

Sec. 52. It shall hereafter be unlawful to buy or acquire any title other than a lien in a motor vehicle registered or licensed in this State without then and there demanding of the proposed seller the registration receipt and certificate of title covering the particular motor vehicle which shall, upon consummation of the purchase, be transferred upon such form as may be provided by the Department.

Sec. 53. All sales made in violation of this Act shall be void and no title shall pass until the provisions of this Act have been complied with.

Sec. 54. It shall be unlawful for any person to make application for a certificate of title on any motor vehicle within this State known by such person to have been stolen, converted, or concealed.

Sec. 55. The Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and to prescribe such forms as are herein provided for, as well as such others as it may deem proper, and shall provide the several designated agents within this State with sufficient supply thereof.

Sec. 56. It is hereby expressly made the duty of the several designated agents in this State to comply with the provisions hereof, and any such designated agent failing or refusing so to do shall be liable on his official bond for any damages suffered by any person.

Sec. 57. Each applicant for a certificate of title or reissuance thereof shall pay to the designated agent the sum of Twenty-five (25) Cents which shall be forwarded to the Department together with the application for certificate of title within twenty-four (24) hours after same has been received by him and the Department shall return to the designated agent each month Ten (10) Cents for each application to which a certificate of title has been issued, and the balance shall be paid over to Treasurer of this State to be credited to the General Revenue Fund of this State.

No money collected under this Act shall ever be expended except by a direct appropriation of the Legislature and such appropriation shall never exceed that amount which was collected under this Act in the preceding two years.

Sec. 58. It shall be unlawful for any person to, in any manner, alter any manufacturer's or importer's certificate or any receipt or certificate of title after the same has been issued.

Sec. 59. It shall be unlawful to use a false or fictitious name or give a false or fictitious address or make any false statement in any application for certificate of title.

Sec. 60. The provisions of this Act shall not apply to motor vehicles not required to be registered or licensed under the laws of this State then effective, nor to motor vehicles owned or operated by the Federal Government or any of its agencies, the State of Texas, or any municipal government unless such motor vehicle is sold to a person required under this Act to procure a certificate of title, in which event the provisions hereof shall be fully operative as to such motor vehicle.

Sec. 61. It shall be unlawful to give any false or fictitious name or address or other information required to be given on the forms provided by the Department to be executed by any applicant for a certificate of title or to falsely misrepresent any fact concerning the release or discharge of any liens on motor vehicles covered by a receipt or a certificate of title.

Sec. 62. Any person who shall violate any provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than One Dollar (\$1) nor more than One Hundred Dollars (\$100) for the first offense, and may, upon any subsequent conviction for a violation of the same provision, within the discretion of the jury, be given double the amount of punishment provided for a first violation.

Sec. 63. (a) This Act shall become effective October 1, 1939, and the Department shall provide each designated agent within this State with a supply of receipt forms for issuing on or before the effective date hereof and shall promulgate such reasonable rules and regulations as

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

are herein provided for on or before August 1, 1939, and provide each designated agent within the State with at least five (5) copies thereof.

(b) The Department or any agent thereof shall not after the 1st of January, 1942, register or renew the registration of any motor vehicle, unless and until the owner thereof shall make application for and be granted an official certificate of title for such vehicle or present satisfactory evidence that a certificate of title for such vehicle has been previously issued to such owner by the Department. Provided, however, this shall not apply to automobiles which were purchased new prior to January 1, 1936.

(c) The owner of a motor vehicle registered in this State shall not after January 1, 1942, operate or permit the operation of any such motor vehicle upon any highways without first obtaining a certificate of title therefor from the Department, nor shall any person operate any such motor vehicle upon the public highways knowing or having reason to believe that the owner has failed to obtain a certificate of title therefor.

Sec. 64. If any section, subsection, or clause of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection, or clause so declared unconstitutional. Acts 1939, 46th Leg., p. 602.

Effective October 1, 1939.

Section 65 of the act of 1939 repeals all conflicting laws and parts of laws.

Section 66 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to provide for the issuance of certificates of title covering motor vehicles and their parts, with certain specified exceptions, so as to disclose ownership and encumbrances; defining the terms "motor vehicle," "lien," "owner," "mortgagee," "mortgagor," "first sale," "subsequent sale," "new car," "used car," "person," "hereafter," "receipt," "stolen and converted," "concealed motor vehicle," "manufacturer," "importer," "distributor," "dealer," "motor number," "serial number," "manufacturer's certificate," "importer's certificate," "certificate of title," "department," and "designated agent"; placing the administration and enforcement of the law in the Department of Public Safety, and providing its rights and duties in respect thereto; authorizing the said Department to prescribe necessary forms, and to make rules necessary to effectuate the law; prescribing the method and manner of procuring certificates of title, issuance and reissuance of the same and duplicates thereof, and stating conditions and prerequisites therefor; requiring the owners and purchasers of motor vehicles to procure such certificates; requiring the transfer of certificates in all cases of sale, and making sales without transfer of certificate void; prohibiting the sale, disposition, or purchase of motor vehicles without a certificate of title; providing for the showing of mortgages and other liens on such certificates; providing that such certificates shall consti-

tute notice of such liens and mortgages, and prescribing the priorities of liens and mortgages as against all parties; prescribing the method and manner of endorsing the liens or mortgages on such certificates; providing for the cancellation or termination of such certificates and the release of liens and mortgages noted thereon; requiring the issuance of a certificate and the prerequisites thereof in connection with the rebuilding of motor vehicles and the sale, operation, or disposition thereof; providing for the suspension or revocation of certificates of title; authorizing a hearing on any matter connected with the issuance, suspension, or cancellation of such certificate and appeal to the Courts after hearing; prohibiting the alteration, forgery, or counterfeiting of such certificates or any assignment thereof, and making same an offense and providing a penalty; prohibiting making of application for certificates by other persons than the owner; prohibiting alteration, mutilation of any motor number, serial number, or manufacturer's number on any motor vehicle, making same an offense and providing a penalty; making it an offense for any person to have in his possession a motor vehicle, motor, or motor block on which the motor number, serial number, or manufacturer's number has been changed, altered, erased, or mutilated, and providing for a penalty; authorizing any peace officer to take possession of any such motor vehicle, motor, or motor block on which such numbers have been changed; requiring the payment of fees; making certain provisions with reference to moneys collected under this Act; prohibiting the use of false or fictitious names or addresses in the application for certificates; prohibiting the misrepresenta-

tion of any fact concerning the ownership or discharge of liens in connection with the issuance of certificates; making it unlawful to violate any of the provisions of this Act; prescribing the duties of the "designated agents," requiring their performance thereof, and making their official bondsmen liable for their failure; providing for a fine of

from One Dollar (\$1) to One Hundred Dollars (\$100) for the first offense and a double penalty for subsequent offenses; providing effective dates for the Act; providing a saving clause as to constitutionality; repealing laws in conflict; and declaring an emergency. Acts 1939, 46th Leg., p. 602.

**Art. 1436a. Regulating dealing in used pipe line and oil and gas equipment; definitions**

Section 1. (a) That "Pipe Line Equipment" is hereby defined to be all pipe, fittings, pumps, telephone and telegraph lines, and all other material and equipment used as part of or incident to the construction, maintenance and operation of any pipe line for the transportation of oil, gas, water or other liquid or gaseous substance.

(b) "Oil and Gas Equipment" is hereby defined to be equipment and materials which are part of, or incident to, the development, maintenance and operation of oil and gas properties. Included in this definition is equipment and materials which are part of, or incident to the construction, maintenance and operation of oil and gas wells, oil and gas leases, gasoline plants, and refineries.

(c) "Pipe Line Equipment, Oil and Gas Equipment" shall be classed as "used materials", after such equipment has once been placed into the use for which the same was first manufactured and intended.

The term "used materials" shall mean any used pipe line equipment or oil and gas equipment as defined by this Act.

**Definitions**

Sec. 2. (a) "Person" shall mean and include persons, firms, partnerships, companies, corporations, associations, common law trusts, statutory trusts and other concerns by whatever name known or howsoever organized, formed or created.

(b) "Dealer" shall mean and include every person engaged in buying, selling, or otherwise dealing in used materials and who has a fixed, designated place, or places of business, within the State.

(c) "Broker" shall mean and include every person engaged in buying, selling, or otherwise dealing in used materials, as agent for the seller of such used materials, or as agent for the buyer of such used materials, or as agent for both.

(d) "Peddler" shall mean and include every person who is not a dealer or broker, and who is engaged in the buying, selling or otherwise dealing in used materials.

(e) "Owner" shall mean and include every person who owns or acquires used materials, and which is intended to be employed or is being employed in the business of such person as an incident thereto and is not owned or acquired for the purpose of resale.

(f) "Yard" shall mean the place where any dealer stores used materials, or keeps the same for the purpose of sale.

**Bill of sale, necessity and requisites**

Sec. 3. Every dealer, broker or peddler as herein defined shall before purchasing any used materials, at any time after the effective date of this Act, require a bill of sale for such used materials to be executed and acknowledged by the seller in the manner required by law for registration thereof containing the name and address of such dealer, broker or peddler, the serial number, if any, the kind, make, size, weight, length and quantity of the used materials so purchased, the date of the pur-

chase, if different from the date of the bill of sale, the name and address of the seller, and the place of location of such property at the time purchased or acquired.

**Act inapplicable to purchases under \$25.00**

Sec. 4. The provisions of this Act shall not apply where the reasonable market value of purchases made is less than Twenty-five (\$25.00) Dollars.

**Penalty**

Sec. 5. Every person, dealer, peddler or broker who violates any of the provisions of this Act shall be guilty of a misdemeanor and upon a conviction, shall be subject to a fine of not less than Ten (\$10.00) Dollars or more than Fifty (\$50.00) Dollars. The Attorney General of this State or any District Attorney or County Attorneys of this State shall be, and is hereby authorized and empowered to enjoin in the name and behalf of the State of Texas any dealer, peddler or broker from continuing in said business in the State of Texas upon violation of any of the provisions of this Act. Acts 1937, 45th Leg., p. 827, ch. 405.

Effective 90 days after May 22, 1937, date of adjournment.

Section 6 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act to regulate the business of buy-

ing, selling and otherwise dealing in used pipe line and oil and gas equipment, defining dealers, peddlers and brokers engaged in said business, requiring the securing of bills of sale, and providing penalties for violation of this Act, and declaring an emergency. [Acts 1937, 45th Leg., p. 827, ch. 405.]

## CHAPTER TEN—THEFT OF ANIMALS

**Art. 1441. 1354, 882, 747 Theft of cattle or hog**

Whoever shall steal any cattle or hog shall be confined in the penitentiary not less than two (2) nor more than ten (10) years. [As amended Acts 1937, 45th Leg., p. 416, ch. 211, § 1.]

Amendment of 1937 effective 90 days after May 22, 1937, date of adjournment.

Section 2 of the amendatory Act of 1937

declared an emergency and provided that the Act should take effect from and after its passage.

**Art. 1442. [1355] [883] [748] Theft of sheep or goat**

Whoever shall steal any sheep or goat shall be confined in the penitentiary not less than two (2) nor more than ten (10) years. [As amended Acts 1937, 45th Leg., p. 415, ch. 210, § 1.]

Amendment of 1937, effective 90 days after May 22, 1937, date of adjournment.

Section 2 of the amendatory Act of 1937

declared an emergency and provided that the Act should take effect from and after its passage.

## CHAPTER FOURTEEN—DISEASES OF ANIMALS AND BEES

**Art.**

**1525d. Bang's disease, cattle infected with, to be branded and tagged for identification [New].**

**Art.**

**1525e. Bang's disease, sale of cattle infected with, unlawful; penalty [New].**

**Art. 1525d. Bang's disease, cattle infected with, to be branded and tagged for identification**

Section 1. That when an accredited representative of the Livestock Sanitary Commission of Texas or an accredited representative of the United States Secretary of Agriculture or an authorized veterinarian makes an agglutination blood test for Bang's Disease of cattle in this

State and furnishes to the owner of such cattle in writing data showing that a certain identified animal or animals have reacted to the test and are affected by the disease, it shall be the duty of the owner of such cattle within ten (10) days to brand each reactor or animal affected with the disease on the left jaw with the letter "B" and place a metal tag in the ear of each such animal with numbers thereon and report in writing to the Livestock Sanitary Commission of Texas the numbers on such tags.

#### Penalty

Sec. 2. If any person shall violate any of the provisions of this Act, he shall be guilty of a misdemeanor and, upon conviction, shall be fined a sum not to exceed Two Hundred Dollars (\$200) for each offense. [Acts 1937, 45th Leg., p. 875, ch. 431.]

Effective June 2, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act requiring owners of cattle affect-

ed with Bang's Disease to brand and tag them for identification after they have been tested and found to have such disease; and providing a penalty; and declaring an emergency. [Acts 1937, 45th Leg., p. 875, ch. 431.]

Art. 1525e. Bang's disease, sale of cattle infected with, unlawful; penalty

Section 1. It shall hereafter be unlawful for any person to sell or otherwise dispose of any cattle for milk purposes when he knows or has reason to believe said cattle are infected with Bang's disease.

Sec. 2. If any person shall violate any of the provisions of this Act, he shall be guilty of a misdemeanor and, upon conviction, shall be fined a sum not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100). The sale of each particular cow shall be considered a separate offense. Acts 1939, 46th Leg., p. 250.

Effective June 7, 1939.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act to prohibit the sale or disposal of

cattle for milk purposes by any person knowing or having reason to believe same are infected with Bang's disease; prescribing a penalty; and declaring an emergency. Acts 1939, 46th Leg., p. 250.

## CHAPTER SIXTEEN—SWINDLING AND CHEATING

Art. 1546. Specific acts; certain wrongful acts included

Sec. 4. Repealed. Acts 1939, 46th Leg., p. 246, § 7.

Effective 90 days after June 21, 1939 date of adjournment.

## TITLE 18—LABOR

## CHAPTER SIX—WORKMEN AND FIREMEN

Art.

1583b. Vacations for jailers, jail guards,  
and jail matrons [New].

## Art. 1583. Work and vacation of firemen or policemen

1. No member of any fire department or police department in any city of more than twenty-five thousand (25,000) inhabitants shall be required to be on duty for more than six (6) days in any one week.

2. The preceding subdivision shall not apply to cases of emergency.

3. Each member of any such departments in any city of more than thirty thousand (30,000) inhabitants shall be allowed fifteen (15) days vacation in each year, with pay; provided that the provision of this Section of this Act shall not be applied to any member of any such departments in any city of more than thirty thousand (30,000) inhabitants unless such member shall have been regularly employed in such department or departments for a period of at least one year.

4. Each preceding Federal Census shall determine the population.

5. The city officials having supervision of the fire department and police department shall designate the days of the week upon which each such member shall not be required to be on duty, and the days upon which each such member shall be allowed to be on vacation.

6. It shall be unlawful for any city of more than seventy-five thousand (75,000) inhabitants to require or permit any such firemen and policemen to work more than twelve (12) hours per calendar day or more than seventy-two (72) hours in any one calendar week and, in no event, more than one hundred forty-four (144) hours in any two (2) consecutive calendar weeks in the discharge of their duties except in case of emergency which may arise where it may become necessary to work more than twelve (12) hours per calendar day or more than seventy-two (72) hours in any one calendar week or more than one hundred forty-four (144) hours in any two (2) consecutive calendar weeks for the protection of property or human life; said firemen and policemen shall draw additional compensation for the number of hours worked in addition to the regular twelve (12) hour calendar day, or more than the regular seventy-two (72) hours in any one calendar week or more than the regular one hundred forty-four (144) hours in any two (2) consecutive calendar weeks or if required to work on any day which has been designated as the day of the week that such member of said department should not be required to be on duty, additional compensation at the rate of time and one-half over time computed upon the basis of their monthly salary shall be paid to them for such additional time as they are required to work.

7. It is further provided that in any city of more than seventy-five thousand (75,000) inhabitants that each member of any such department shall receive a sum of One Hundred Fifty (\$150.00) Dollars per month as a minimum wage for said services so rendered.

The city official having charge of the fire department or police department in any such city who violates any provision of this Article shall be fined not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars, and each day on which said city official shall cause or

permit any section of this Act to be violated shall constitute and be a separate offense. [As amended Acts 1937, 45th Leg., p. 358, ch. 173, § 1.]

Effective April 19, 1937.

Section 2 of this Act declared an emergency, making the Act effective on and after its passage.

ference between wages paid and wages required to be paid by this article by cities of over 75,000 population, see Vernon's Rev. Civ.St. art. 802a.

Funding indebtedness representing dif-

#### Art. 1583b. Vacations for jailers, jail guards, and jail matrons

Every member of the sheriff's department assigned to duty as jailer, jail guard, or jail matron at any county jail in any city of more than twenty-five thousand (25,000) inhabitants shall be allowed fifteen (15) days vacation in each year with pay, not more than two (2) members to be on vacation at the same time; provided that the provisions of this Section of this Act shall not be applied to any such jailer, jail guard, or jail matron in any city of more than twenty-five thousand (25,000) inhabitants, unless such member shall have been regularly employed as such jailer, jail guard, or jail matron for a period of at least one year.

Each preceding Federal Census shall determine the population.

The sheriff having supervision of the county jail shall designate the days upon which each jailer, jail guard, or jail matron shall be allowed to be on vacation.

The sheriff having supervision of the county jail in any such city who violates any provision of this Article shall be fined not less than Ten Dollars (\$10), nor more than One Hundred Dollars (\$100). [As added Acts 1937, 45th Leg., p. 247, ch. 129, § 1.]

Effective April 9, 1937.

Section 2 of this Act declared an emer-

gency making the Act effective on and after its passage.

### CHAPTER SEVEN—EMPLOYMENT AGENTS

#### Art. 1589. Fees

No fee nor other charge shall be made by any employment agent or agency for registration of applicants for employment, and where a fee is charged for obtaining employment, such fee shall not be collected nor received until the applicant has obtained and accepted employment, and all such fees or charges shall be agreed to and stipulated in the application at the time such employment agent registers such applicant. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1886, ch. 16, § 1.]

Effective Nov. 3, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

## TITLE 19—MISCELLANEOUS OFFENSES

Chap.

13. Welfare or assistance [New].

### CHAPTER NINE—RAILROAD COMMISSION

Art.

1690d. Motor bus ticket brokers—penalty for violation of regulatory act [New].

#### Art. 1690d. Motor bus ticket brokers—penalty for violation of regulatory act

Any person, corporation, or any officer, agent, servant, or employee of any such corporation, and every other person who violates or fails



to comply with, or who procures, aids or abets in the violation of this Act, or any rule, regulation, order or decree of the Commission promulgated under the terms of this Act, shall be guilty of a misdemeanor; and upon conviction thereof, shall be punished by a fine of not less than One Hundred (\$100) Dollars and not to exceed Two Hundred (\$200) Dollars, and the violations occurring on each day shall each constitute a separate offense. Any authorized inspector for the Railroad Commission, and all law enforcement officers of the State, shall have power and authority, and it shall be their duty, to make arrests for the violation of any of the provisions of this Act. Acts 1939, 46th Leg., p. 672, § 15.

Effective May 17, 1939.

672, are published as Rev. Civil St. art.

Sections 1-19 of Acts 1939, 46th Leg., p. 911d.

## [CHAPTER TEN A]—PLANT DISEASES AND PESTS

Art.

1700a—3. Dealers, handlers, transporting agents and buying agents; license requirements; bond; penalties [New].

Art. 1700a—3. Dealers, handlers, transporting agents and buying agents; license requirements; bond; penalties

From and after the effective date of this Act any person who shall:

(a) Act as a dealer and/or handler, as the terms "dealer" and/or "handler" are in this Act defined, without first obtaining a license to act as such dealer and/or handler.

(b) Act or assume to act as a transporting agent or buying agent as the terms are herein defined, without first obtaining from the Commissioner of Agriculture of the State of Texas a license or a buying agent's or a transporting agent's card as by the terms and provisions of this Act required, shall be fined not to exceed Two Hundred Dollars (\$200), and each day upon which any dealer, handler, buying agent, or transporting agent, shall act or assume to act in violation of the requirements of this Act shall constitute a separate offense.

(1) Any buying or transporting agent who ceases to be employed by or the agent of the dealer or handler to whom such buying agents or transporting agents' cards were issued and who fails and refuses on the termination of such employment to turn over to the Commissioner of Agriculture the buying or transporting agent's cards issued to such persons shall be fined not to exceed Two Hundred Dollars (\$200).

(2) Any person who shall act or assume to act as a commission merchant and/or dealer or a contract dealer, as the terms "commission merchant" and/or "dealer" or "contract dealer" are used in this Act, without first filing with the Commissioner of Agriculture of the State of Texas a bond in the principal sum of Five Thousand Dollars (\$5,000) as by this Act required, and obtaining a license to act as such commission merchant and/or dealer or contract dealer shall be fined not to exceed Two Hundred Dollars (\$200), and each day upon which such person shall act or assume to act as such commission merchant and/or dealer or contract dealer shall constitute a separate offense.

(3) Any licensee or any transporting or buying agent of any licensee under this Act who shall violate any of the terms and provisions of this Act shall be fined not to exceed Two Hundred Dollars (\$200). Acts 1937,

45th Leg., p. 464, ch. 236, § 21; as amended Acts 1939, 46th Leg., p. 41, § 10.

1939 amendment effective June 30, 1939.  
For sections 12-14 see note under Rev.Civ.  
St. art. 118b.

Sections 1-20, 22-28 of Acts 1937, 45th  
Leg., p. 464, ch. 236 published as Rev.Civ.  
St. art. 118b.

## CHAPTER 13.—WELFARE OR ASSISTANCE [NEW]

Art.

1720a. Fees for assisting in obtaining welfare assistance limited—Advertising or soliciting—Punishment.

**Art. 1720a. Fees for assisting in obtaining welfare assistance, limited—Advertising or soliciting—Punishment**

Section 1. It shall be unlawful for any attorney at law, or attorney in fact, or any other person, firm or corporation whatsoever, representing any applicant or recipient of assistance to the aged, to the needy blind, or to any needy dependent child, or for any child welfare service with respect to any application before the State department, or any of its agents, to charge a fee for his services in excess of Ten Dollars (\$10) in aiding or representing any such applicant before the State department, or for any other service in aiding such applicant to secure assistance of service. It shall likewise be unlawful for any person, firm, or corporation to advertise, hold himself out for, or solicit the procurement of assistance or service.

**Soliciting dues for purpose of collecting or advertising or sponsoring pensions or benefits prohibited**

Sec. 2. It shall be unlawful for any person, firm or corporation to solicit or collect dues or money for himself or itself, or any organization, association, partnership or corporation for the purpose or pretended purpose of collecting, or aiding in the collection of, or advertising or sponsoring old age pensions of any kind, or benefits for any person or group of persons from the Social Security program as it applies to old age assistance, blind persons, or dependent and destitute children; provided, however, an attorney at law, or attorney in fact, or any other person, representing any applicant or recipient of assistance to the aged, to the needy blind, or to any needy dependent child, or for any child welfare service with respect to any application before the State department, or any of its agents, may charge a fee for his services not in excess of Ten Dollars (\$10) in aiding or representing any such applicant before the State department, or for any other service in aiding such applicant to secure assistance of service.

**Persons not prohibited from obtaining Social Security Benefits**

Sec. 3. Nothing in this Act shall prohibit persons receiving Social Security Benefits from the State of Texas or from the United States Government, or who are eligible to receive Social Security Benefits from the State of Texas or from the United States Government, from organizing and sponsoring Social Security legislation.

**Punishment for violations**

Sec. 4. Any attorney at law, or attorney in fact, or any other person, acting for himself or as the agent or representative of a firm, corporation, organization, association, or other person, who violates this Act

in any manner shall be deemed guilty of a felony and shall, upon conviction, be confined in the county jail for a term of not less than thirty (30) days nor more than one year or be confined in the State penitentiary for a term of not less than one nor more than five (5) years.

**Civil suits to enforce act—Enjoining violations—Venue**

Sec. 5. The Attorney General of Texas shall have the authority, right and power to bring civil suits to enforce the provisions of this Act and to enjoin any violations thereof, and suits for injunction brought by the Attorney General shall be tried as ordinary injunction suits, and the venue of all of said suits shall be in Travis County. Acts 1939, 46th Leg., p. 252.

Effective 90 days after June 21, 1939 date of adjournment.

Section 6 of the Act of 1939 repeals all conflicting laws and parts of laws.

Section 7 read as follows: "If any part of this Act is held to be unconstitutional or otherwise invalid such unconstitutionality or invalidity shall not impair the remaining part of this Act."

Section 8 declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act making it unlawful for anyone representing any applicant or recipient of assistance to the aged, needy blind, dependent child, or child welfare service, with respect to applications before the State department, to charge a fee in excess of Ten Dollars (\$10) in representing such applicant; and

making it unlawful for anyone to advertise, hold himself out for, or solicit the procurement of assistance or service; and making it unlawful for anyone to solicit or collect dues or money, for themselves or for others, for the purpose or pretended purpose of collecting or advertising or sponsoring old age pensions or benefits for any person from the Social Security program as it applies to old age assistance, needy blind persons and dependent and destitute children; making provisions for certain organizations; prescribing a penalty for violation of the provisions of this Act; authorizing the Attorney General to bring civil suits to enforce this Act, and placing venue of said suits in Travis County; repealing all laws or parts of laws in conflict herewith; providing a saving clause; and declaring an emergency. Acts 1939, 46th Leg., p. 252.



THE  
CODE OF CRIMINAL  
PROCEDURE

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**TITLE 2—COURTS AND CRIMINAL JURISDICTION**

JEFFERSON COUNTY CRIMINAL  
DISTRICT COURT

Art.

52—160a. Jurisdiction increased [New].

**ACTS CREATING CRIMINAL DISTRICT COURTS AND SIMILAR COURTS AND AFFECTING SUCH COURTS, AND DECISIONS THEREUNDER**

JEFFERSON COUNTY CRIMINAL DISTRICT COURT

**Art. 52—160a. Jurisdiction increased**

Section 1. In addition to the jurisdiction now conferred upon the Criminal District Court of Jefferson County by the Constitution and laws of the State of Texas, said Court shall hereafter have and exercise civil jurisdiction in suits, causes, and matters of:

(1) Divorce, as provided in Chapter 4, Title 75, of the Revised Civil Statutes of Texas of 1925, and any amendments thereof, heretofore or hereafter made thereto;

(2) Dependent and delinquent children, as provided in Title 43, Revised Civil Statutes of Texas of 1925, and any amendments thereof, heretofore or hereafter made thereto;

(3) Adoption, as provided in Title 3, Revised Civil Statutes of Texas of 1925, and any and all amendments heretofore or that may hereafter be made thereto;

(4) Habeas corpus proceedings in civil matters.

Sec. 2. In all matters pertaining to the additional jurisdiction herein conferred upon said Court, all the officers of said Court shall have the same powers, rights, and duties that are now or that may hereafter be conferred upon the same or similar officers in the other District Courts of Jefferson County, Texas, and all fees and costs in such matters shall be the same as now or that may hereafter be provided in the same or similar matters in the other District Courts of Jefferson County, Texas.

Sec. 3. The Judges of the District Courts of Jefferson County and the Judge of the Criminal Court of Jefferson County shall elect one of their number as the presiding Judge of all the District Courts of Jefferson County including the Criminal District Court of Jefferson County; and the presiding Judge of the District Courts of Jefferson County may assign any cases in his Court, or in any of the District Courts in Jefferson County involving or pertaining to the matters set out in Section 1 hereof to any Judge or Court, including the Criminal District Court of Jefferson County, or may assign any Judge to try any of said causes in any of said Courts, and the Judge in whose Court an assigned case is pending shall transfer the case to the Court to which it is assigned, and the Judge of the Court to which it is assigned shall receive and try the case. When such transfer or transfers are made, the Clerk of such Court shall enter such cause or causes upon the docket to which said transfer or transfers are made, and when so entered upon the docket, the Judge shall try and dispose of said cause or causes in the same manner as if such cause or causes were originally instituted in said Court.

Sec. 4. The trials and proceedings in said Courts in such matters shall be conducted according to the laws governing the pleadings, practice, and proceedings in

civil cases in the District Courts and in conformity with the provisions of Article 2092, Revised Civil Statutes of Texas, of 1925, and all appeals in such civil cases shall be to the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas in the manner now or that may hereafter be provided by law. Acts 1939, 46th Leg., p. 193.

Effective April 5, 1939.

Section 5 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Title of Act:

An Act giving civil jurisdiction to the Criminal District Court of Jefferson County of suits and causes in matters of divorce, dependent and delinquent children, adoption, and habeas corpus in civil proceedings; providing for the transfer and trial

of such causes and the duties of the officers of the Court; providing for the civil procedure therein in accordance with the General Civil Statutes and Article 2092, Revised Civil Statutes of Texas of 1925; and providing for appeals in civil matters to the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas; and declaring an emergency. Acts 1939, 46th Leg., p. 193.

## TITLE 7—AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

### CHAPTER ONE—ORGANIZATION OF THE GRAND JURY

Art.

367c. Grand jury bailiffs in counties of 290,000 to 320,000 [New].

Art. 367c. Grand jury bailiffs in counties of 290,000 to 320,000

Section 1. Any county in this State having a population of not less than two hundred and ninety thousand (290,000) inhabitants and not more than three hundred and twenty thousand (320,000) inhabitants according to the United State's Census of 1930 and all future Federal Census, the Judge of the Criminal District Court in such county may appoint grand jury bailiffs not exceeding seven (7) whose compensation shall be Twenty-four Hundred (\$2400.00) Dollars per annum, each; said compensation to be payable in twelve (12) equal monthly installments. Bailiffs thus appointed are subject to removal for cause, or without cause, at the will of the Judge of the Criminal District Court.

Sec. 2. In addition to the salary herein provided for grand jury bailiffs serving the Criminal District Court in such county shall each be allowed the sum of Twenty-five (\$25.00) Dollars per month for repair, maintenance, and traveling expenses of an automobile used by each of said grand jury bailiffs while on official business in the investigation of crime and the service of process. Said allowances together with the salary of each of said grand jury bailiffs to be paid monthly by said county out of the Jury Funds of said county. Acts 1937, 45th Leg., p. 328, ch. 166.

Effective April 16, 1937.

Section 3 of this Act repeals all conflicting laws and parts of laws and section 4 declares an emergency making the Act effective on and after its passage.

Title of Act:

An Act providing for the appointment of grand jury bailiffs by the Judge of the Criminal District Court in any county having a population of not less than two hundred and ninety thousand (290,000) inhabitants and not more than three hundred

and twenty thousand (320,000) inhabitants, according to the United States Census of 1930 and all future Federal Census; providing for the salaries of said grand jury bailiffs, the method of payment, and the removal of said grand jury bailiffs; providing certain expenses to be allowed for travel and in connection with the use of the automobiles for official business by said grand jury bailiffs; repealing all laws in conflict, and declaring an emergency. [Acts 1937, 45th Leg., p. 328, ch. 166.]

## TITLE 8—TRIAL AND ITS INCIDENTS

### CHAPTER TWO—SPECIAL VENIRE IN CAPITAL CASES

Art.

601—a. Special venire in counties having  
 city of 231,500 to 250,000 [New].

#### Art. 590. 659, 646 Setting capital cases

A capital case may by agreement of the parties be set for any particular day of the term with the permission of the court; or the court may at its discretion set a day for the trial or disposition of the same; and the day agreed upon by the parties, or fixed by the court, may be changed, and some other day fixed, should the court at any time deem it advisable.

Provided that the court may at its discretion set any number of capital cases for the same day of the term, and only one venire shall be drawn for all capital cases set for the same day of the term.

Each defendant shall be furnished a list of the venire for the day for which his case is set for trial, as already made and provided by law, and if either case set for trial shall go to trial, then it shall be in the discretion of the court whether the remaining veniremen shall be excused, or ordered back for service in the trial of the remaining case or cases to be tried that were set for trial on that day. [As amended Acts 1937, 45th Leg., p. 1494, ch. 505, § 1.]

Amendment of 1937, effective June 2, 1937.

Section 2 of the amendatory Act of 1937

declared an emergency and provided that the Act should take effect from and after its passage.

#### Art. 601—a. Special venire in counties having city of 231,500 to 250,000

In counties having therein a city of two hundred thirty-one thousand five hundred (231,500), and not more than two hundred fifty thousand (250,000) population, as shown by the last preceding Federal Census, the Judge of the Court having jurisdiction of a capital case in which a motion for a special venire has been made, shall grant or refuse such motion at his discretion and upon such refusal require the case to be tried by the regular jurors summoned for service, and such additional talesmen as may be ordered by the Court, in the Courts of such County where as many as one hundred (100) jurors have been summoned in such County for regular service for the week in which such capital case is set for trial, but the Clerk of such Court shall furnish the defendant or his counsel a list of the persons summoned for jury service for such work upon application therefor, and it is further provided that all laws and parts of laws in conflict with the provisions of this bill be and the same are hereby repealed to the extent of such conflict only. [As added Acts 1937, 45th Leg., p. 477, ch. 241.]

Effective May 1, 1937.

Section 2 of this Act declared an emergency making the Act effective on and after its passage.

## CHAPTER THREE—FORMATION OF JURY IN CAPITAL CASES

### Art. 625. 701 Special pay for veniremen

All men summoned on special venire who have been challenged or excused from service on the trial, shall be paid out of the jury fund One (\$1.00) Dollar for each day that he attends court on said summons. No person shall receive pay as a special venireman and regular juror for the same day. No per diem shall be allowed under this Article to any venireman for more than one case the same day. As amended Acts 1939, 46th Leg., p. 142, § 1.

Effective 90 days after June 21, 1939, date of adjournment.

Section 2 of the amendatory Act of 1939, read as follows:

"Provided, however, the terms and conditions of this Bill shall not apply to any county in this State having a population of not less than two hundred ninety thousand

(290,000) nor more than three hundred fifty-five thousand (355,000) according to the last preceding Federal Census, and all future Federal Census."

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

## TITLE 9—PROCEEDINGS AFTER VERDICT

### CHAPTER FOUR—EXECUTION OF JUDGMENT

#### 1. IN MISDEMEANOR CASES

Art.

- 793a. Convicts laying out fines in jail or working out fines to receive \$1.00 to \$3.00 a day credit in certain counties [New].
- 794a. Work on public roads in certain counties [New].
- 794b. Convicts working out fines to receive one dollar a day credit in certain counties [New].

Art.

- 794c. Convicts laying fines out in jail or working out fines to receive one dollar a day credit in certain counties [New].
- 794d. Convicts laying out fines in jail or working out fines to receive one dollar a day credit in certain counties [New].

#### 1. IN MISDEMEANOR CASES

Article 793. [878] [856] Fine discharged

When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such labor or imprisonment at Three Dollars (\$3) for each day thereof; provided, however, that in all counties in this State containing a population of not less than twenty-four thousand one hundred eighty (24,180) nor more than twenty-four thousand two hundred (24,200); or in any counties containing a population of not less than forty-one thousand (41,000) and not more than forty-two thousand (42,000); and in all counties having a population of not less than forty-three thousand and thirty (43,030) and not more than forty-three thousand and fifty (43,050); and all counties having a population of not less than thirty-seven thousand two hundred eighty-six (37,286) and not more than thirty-seven thousand two hundred ninety (37,290); and all counties having a population of not less than seven thousand one hundred (7,100) nor more than seven thousand one hundred fifty (7,150); and in



counties containing a population of not less than thirty thousand seven hundred and seven (30,707) nor more than thirty thousand seven hundred and nine (30,709); and in counties containing a population of not less than twenty-seven thousand five hundred forty-nine (27,549) nor more than twenty-seven thousand five hundred fifty-one (27,551); and in counties containing a population of not less than nineteen thousand one hundred twenty-eight (19,128) nor more than nineteen thousand one hundred thirty (19,130); and in counties containing a population of not less than eighteen thousand eight hundred fifty-nine (18,859) nor more than eighteen thousand six hundred sixty-one (18,661); and in counties containing a population of not less than ten thousand and thirteen (10,013) nor more than ten thousand and fifteen (10,015), according to the last preceding Federal Census, when a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him, rating such labor and imprisonment at not less than One Dollar (\$1) per day nor more than Three Dollars (\$3) per day.

The Commissioners Court of each such county as defined by population brackets above in this State, at any regular or special term, shall, by order made and entered in the minutes of said Court, determine the rate of wages to be paid convicts in their respective counties for labor or imprisonment per day in accordance herewith. [As amended Acts 1937, 45th Leg., 1st C.S., p. 1808, ch. 30, § 1.]

Effective July 7, 1937.

Section 2 of this Act declared an emer-

gency and provided that the Act should take effect from and after its passage.

**Art. 793a. Convicts laying out fines in jail or working out fines to receive \$1.00 to \$3.00 a day credit in certain counties**

'In all counties in this State containing a population of not less than sixty thousand, five hundred (60,500), nor more than sixty thousand, five hundred and twenty-five (60,525), and in all counties containing a population of not less than thirty-two thousand, eight hundred and twenty (32,820), nor more than thirty-two thousand, eight hundred and fifty (32,850), according to the last preceding Federal Census, whenever a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may, for such time as will satisfy the judgment, be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of such fine and costs adjudged against him; rating such labor or imprisonment at not less than One Dollar (\$1) per day nor more than Three Dollars (\$3) per day. The Commissioners Court of each such county as defined by population brackets above in this State, at any regular or special term, shall, by order made and entered in the minutes of said Court, determine the rate of wages to be paid convicts in their respective counties for labor or imprisonment per day in accordance herewith. [Acts 1937, 45th Leg., 2nd C.S., p. 1889, ch. 18, § 1.]

Effective Nov. 3, 1937.

Section 2 of the act of 1937 declared an emergency and provided that the act

should take effect from and after its passage.

## Art. 794a. Work on public roads in certain counties

Section 1. In all counties in this State containing a population of not less than forty-three thousand, one hundred and eighty (43,180), nor more than forty-four thousand, one hundred (44,100), according to the last Federal Census, the Commissioners Court shall require all able-bodied male convicts, not otherwise employed, to labor on the public roads and under such regulations as they may prescribe, and each convict so worked shall receive a credit of One Dollar (\$1) per day for each day he may work, ten (10) hours to be applied first to his fine and then to his costs. Each officer and witness shall be allowed to receive one-half his fees, exclusive of Commissioners, to be paid upon the warrant of the County Judge whenever said convict shall have discharged the amount of his fine and costs adjudged against him in full by work or work and money, which amount shall be paid to the officers and witnesses out of the road and bridge fund of the county. If a convict dies or escapes and is not recaptured, or is sent to the penitentiary, the amount worked out shall be credited first on the fine and the remainder shall be prorated among the officers and witnesses in proportion to the amount due them. The Commissioners Court shall provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention, and superintendent and guards for the safe and humane keeping of all convicts; provided that the Commissioners Court may require all county convicts to work on the county farm and provided further that no convict shall hereafter be credited on his fine and costs with more than One Dollar (\$1) per day. Provided further, that the Commissioners Court of said counties shall be authorized and empowered to purchase all the necessary means of transportation including any and every kind of motor vehicle, passenger car, and/or trucks, which, in the opinion of said Court, may be reasonably necessary to transport from place to place in said county the said convicts and/or other laborers, mechanics and/or superintendents, including the members of the Court themselves, if necessary, to the various places in said county in order that road and bridge work may be properly carried on and performed with dispatch and efficiency; and provided further, that said Court may provide for the cost of operation and maintenance of said motor vehicle or vehicles purchased and operated for said purposes, and the expense necessary for the purchase price of said motor vehicles, together with all necessary operating costs, maintenance costs, and repair costs shall be paid on orders of said Commissioners Court, duly audited, authorized, and approved as in other accounts.

And further provided, that it shall be unlawful for any County Judge, County Attorney, County Clerk, Sheriff, Deputy Sheriff, Justice of the Peace, Constable, or Deputy Constable of said county to fail or refuse to commit and deliver to the Road Commissioner or person in charge of the convict road gang or to the Superintendent of the county farm, any county convict who fails to pay in full his fine and costs immediately upon conviction either by trial or plea of guilty and it is hereby declared to be unlawful for any of said officers to permit any county convict to go at large upon any character of partial payment on his fine and cost or upon any character of promise to pay same, but all convicts shall be held and in default of all fine and costs adjudged against him he shall be promptly delivered to the proper parties for road duty or work on the county farm as ordered by the Commissioners Court. And it is further declared to be unlawful for any of said officers to make any agreement with any defendant who is charged with a misdemeanor in any Court or accept any partial payment upon a fine and costs to be entered upon record

later or to accept any sum of money to be thereafter applied upon the defendant's fine and costs and mark defendant's case continued by virtue of said agreement or to agree that same will be passed or continued upon such partial payment or deposit of money in any manner whatever. Any of said officers who shall violate any of the provisions of this Section knowingly shall be deemed guilty of a misdemeanor, and upon conviction before a Court of competent jurisdiction shall be fined in any sum not less than Ten Dollars (\$10) and not more than Twenty-five Dollars (\$25).

Sec. 2. This Act shall be considered cumulative of all general and special laws of the State of Texas now in force on the subject of roads and bridges, when not in conflict herewith, but in case of conflict, then this Act shall control as to counties affected by this Act. [Acts 1937, 45th Leg., p. 206, ch. 109.]

Effective April 6, 1937.

Section 3 of this Act declared an emergency making the Act effective on and after its passage.

**Title of Act:**

An Act authorizing the Commissioners Court in certain counties to require all male convicts to labor on the public roads; providing that each convict shall receive a credit of One Dollar (\$1) a day for each day so employed; providing for the payment of fees to officers and witnesses; providing that the Commissioners Court shall provide for the transportation of the county convicts who may be ordered to work on said roads, and for the transportation from place to place in the county of the various employees, hands, laborers, mechanics, and artisans who may be em-

ployed on the roads and bridges of the county in the inspection and general supervision of the roads and bridges of said counties by providing for the purchase by the Court of such motor vehicles, motor trucks, and trailers as may appear reasonably necessary and proper by said Court for said purposes; providing for the necessary and incidental expenditures for the maintenance and upkeep of said motor vehicles as may be provided by said Court; providing the duties of certain officers in connection herewith and prescribing a penalty for failure to perform such duties; making the Act cumulative of all other General and Special Laws on the same subject, and declaring an emergency. [Acts 1937, 45th Leg., p. 206, ch. 109.]

**Art. 794b. Convicts working out fines to receive one dollar a day credit in certain counties**

In all of the counties in this State containing a population of not less than twenty-nine thousand, four hundred (29,400) nor more than thirty thousand, four hundred (30,400), and in counties containing a population of not less than forty thousand, nine hundred (40,900) nor more than forty thousand, nine hundred and seventy-five (40,975), and in counties containing a population of not less than forty-six thousand, one hundred and eighty (46,180) nor more than forty-six thousand, two hundred and eighty (46,280), according to the last preceding Federal Census, all convicts, either laying their fines out in jail or working out said fines on the county farm, county roads, or other public works shall receive a credit therefor of One Dollar (\$1) per day for each day worked, or spent in jail. Acts 1937, 45th Leg., p. 657, ch. 325, § 1.

Effective May 13, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing that in certain counties convicts, either laying their fines out in

jail, or working such fines out on the county farm or on the county roads or other public works, shall receive a credit therefor of One Dollar (\$1) per day for each day worked, or spent in jail; and declaring an emergency. [Acts 1937, 45th Leg., p. 657, ch. 325.]

**Art. 794c. Convicts laying fines out in jail or working out fines to receive one dollar a day credit in certain counties**

Section 1. In all of the counties in this State containing a population of not less than three hundred twenty-five (325,000) thousand nor more

than three hundred forty-five (345,000) thousand, according to the last preceding and each succeeding Federal Census, all persons convicted by a municipal court of said counties, either laying their fines out in city jail or working out said fines, shall receive a credit therefor of One (\$1.00) Dollar per day for each day worked, or spent in jail.

Sec. 2. In all counties in this State containing a population of not less than thirty thousand, four hundred (30,400) nor more than thirty thousand, six hundred (30,600); and containing a population of not less than fifty thousand (50,000) and not more than fifty thousand, one hundred (50,100); and containing a population of not less than forty-one thousand (41,000) nor more than forty-two thousand (42,000); and containing a population of not less than forty-three thousand, thirty-five (43,035) nor more than forty-three thousand, fifty (43,050), according to the last preceding Federal Census, and in succeeding Federal Census, all prisoners or convicts either laying their fines out in city or county jails or working out said fines shall receive a credit therefor of One (\$1.00) Dollar per day for each day working or spent in jail. [Acts 1937, 45th Leg., 1st C.S., p. 1751, ch. 7.]

Effective July 6, 1937.

Section 3 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that in certain counties all persons convicted by a municipal court of such counties, either laying out their fines in a city jail or working out

such fines shall receive a credit therefor of One (\$1.00) Dollar per day; and in certain counties all prisoners or convicts either laying out their fines in jail or working out said fines shall receive a credit of One (\$1.00) Dollar per day; and declaring an emergency. [Acts 1937, 45th Leg., 1st C.S., p. 1751, ch. 7.]

Art. 794d. Convicts laying out fines in jail or working out fines to receive one dollar a day credit in certain counties

In all of the counties in this State containing a population of not less than twenty-four thousand (24,000) nor more than twenty-four thousand, one hundred (24,100), and in all counties containing a population of not less than twenty-five thousand, three hundred and ninety (25,390) nor more than twenty-six thousand (26,000), and in all counties containing a population of not less than forty-eight thousand, five hundred and twenty-five (48,525) nor more than forty-eight thousand, five hundred and thirty-five (48,535), and in all counties containing a population of not less than forty-nine thousand (49,000) nor more than forty-nine thousand, one hundred (49,100), and in all counties containing a population of not less than fifty-three thousand, nine hundred and thirty (53,930) nor more than fifty-three thousand, nine hundred and fifty (53,950), according to the last preceding Federal Census, all convicts, either laying their fines out in jail or working out said fines on the county farm, county roads, or other public works, shall receive a credit therefor of One Dollar (\$1) per day for each day worked or spent in jail. [Acts 1937, 45th Leg., 2nd C.S., p. 1901, ch. 24, § 1.]

Effective Nov. 3, 1937.

Section 2 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

Title of Act:

An Act providing that in certain counties convicts, either laying their fines out

in jail or working such fines out on the county farm, county roads, or other public works, shall receive a credit therefor of One Dollar (\$1) per day for each day worked or spent in jail; and declaring an emergency. [Acts 1937, 45th Leg., 2nd C.S., p. 1901, ch. 24.]

## TITLE 12—MISCELLANEOUS PROCEEDINGS

Chap.

1A. Insanity as defense [New].

## CHAPTER ONE A—INSANITY AS DEFENSE

Art.

932a. Verdict finding insanity at time of offense or at time of trial, effect of [New].

Art. 932a. Verdict finding insanity at time of offense or at time of trial, effect of

Section 1. In any case where insanity is interposed as a defense and the defendant is tried on that issue alone, before the main charge, and the jury shall find the defendant insane, or to have been insane at the time the act is alleged to have been committed, and shall so state in their verdict, and further find the defendant:

a. To have been insane at the time the act is alleged to have been committed, but sane at the time of trial, he shall be immediately discharged;

b. To have been insane at the time the act is alleged to have been committed and insane at the time of trial, or sane at the time the act is alleged to have been committed and insane at the time of trial, the Court shall thereupon make and have entered on the minutes of the Court an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the County Judge of the county, and the proceedings shall forthwith be certified to the County Judge who shall at once take the necessary steps to have the defendant committed to and confined in a State hospital for the insane until he becomes sane.

**Instructions; commitment to state hospital**

Sec. 2. When the defense on the trial of the main charge is the insanity of the defendant the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict, and if they further find the defendant:

a. To have been insane at the time the act is alleged to have been committed, but sane at the time of trial, he shall be immediately discharged;

b. To have been insane at the time the act is alleged to have been committed and insane at the time of trial, or sane at the time the act is alleged to have been committed and insane at the time of the trial, the Court shall thereupon make and have entered on the minutes of the Court an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the County Judge of the county and the proceedings shall forthwith be certified to the County Judge who shall at once take the necessary steps to have the defendant committed to and confined in a State hospital for the insane until he becomes sane.

**Recovery of sanity after commitment; procedure**

Sec. 3. When the defendant so committed to a hospital for the insane becomes sane, the superintendent of the hospital shall give written notice of that fact to the Judge of the Court from which the order of commitment issued. Upon receipt of such notice the Judge shall require the sheriff to bring the defendant from the hospital and place him in the proper custody until the hearing may be had before a jury in such Court to determine defendant's sanity, and if he be found sane, he shall be discharged, unless he had been previously found to be sane at the time at which he is alleged to have committed the offense charged, in which event,

unless previously acquitted, he shall be tried for the offense charged. Acts 1937, 45th Leg., p. 1172, ch. 466.

Effective June 8, 1937.

Section 4 of this Act declared an emergency and provided that the Act should take effect from and after its passage.

**Title of Act:**

An Act providing for the trial and commitment to State hospitals for the insane of persons found upon trial to have been insane at the time of the commission of the act, as well as at the time of the trial of such person; providing for the discharge of persons tried for crime if found to have been insane at the time of the commission of the offense and sane at the

time of the trial; providing for the commitment of such persons to a State hospital for the insane if found to be sane at the time of the commission of the offense but insane at the time of the trial of such person; providing for the trial of persons charged with crime who were sane at the time of the commission of the crime but insane upon the trial of their case, having been committed to a State hospital for the insane and later found to have regained their sanity, and declaring an emergency. Acts 1937, 45th Leg., p. 1172, ch. 466.

## TITLE 15—COSTS IN CRIMINAL ACTIONS

### CHAPTER THREE—COSTS PAID BY COUNTIES

#### Art. 1041. [1143] Guards and Matrons

The sheriff shall be allowed for each guard or matron necessarily employed in the safe-keeping of prisoners Two Dollars and Fifty Cents (\$2.50) for each day. No allowance shall be made for the board of such guard or matron, nor shall any allowance be made for jailer or turnkey, except in counties having a population in excess of forty thousand (40,000) inhabitants according to the last preceding or any future Federal Census. In such counties of forty thousand (40,000) or more inhabitants, the Commissioners' Court may allow each jail guard, matron, jailer and turnkey Four Dollars and Fifty Cents (\$4.50) per day; provided that, in counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding or any future Federal Census, each jail guard, matron, jailer and turnkey shall be paid not less than One Hundred and Seventy-five (\$175.00) Dollars per month. As amended Acts 1937, 45th Leg., p. 7, ch. 7, § 1.

Effective Feb. 10, 1937.

Section 2 of the amendatory act of 1937 declared an emergency and provided that

the act should take effect from and after its passage.

#### Art. 1055. Half costs paid officers

The county shall not be liable to the officer and witness having costs in a misdemeanor case where defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine out on the county roads or on any county project. And to pay such half of costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated. As amended Acts 1937, 45th Leg., p. 1323, ch. 488, § 1; Acts 1939, 46th Leg., p. 143, § 1.

Effective May 15, 1939.

Section 2 of the amendatory act of 1939 declared an emergency and provided that

the act should take effect from and after its passage.

## TITLE 16—DELINQUENT CHILD

#### Art. 1083. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6.]

Effective June 9, 1937.

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END OF VOLUME